

MONTANA LEGISLATIVE HISTORY

Chapter 533 19 97

Bill H 287 S _____ Original bill & history ☒ c

H. Committee on Business + Labor

Hearing Date(s) 1/22 _____ c

1/23 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Business + Industry

Hearing Date(s) 3/6 _____ c

3/19 _____ c

3/25 _____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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4/24 SIGNED BY PRESIDENT
 4/25 TRANSMITTED TO GOVERNOR
 4/30 SIGNED BY GOVERNOR
 CHAPTER NUMBER 451
 EFFECTIVE DATE: 10/01/97

HB 286 INTRODUCED BY SQUIRES, ET AL. LC0122 DRAFTER: CAMPBELL

REQUIRE THE DEPARTMENT OF COMMERCE TO INSPECT ELEVATORS,
 ESCALATORS, DUMBWAITERS, INCLUDING DUMBWAITERS WITH
 AUTOMATIC TRANSFER DEVICES, MOVING WALKS, MATERIAL LIFTS,
 WHEELCHAIR LIFTS, AND STAIRWAY CHAIRLIFTS TO ENSURE
 COMPLIANCE WITH THE STATE BUILDING CODE

1/17	FISCAL NOTE REQUESTED		
1/17	INTRODUCED		
1/17	FIRST READING		
1/17	REFERRED TO BUSINESS & LABOR		
1/17	FISCAL NOTE REQUESTED		
1/22	HEARING		
1/22	FISCAL NOTE RECEIVED		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	FISCAL NOTE PRINTED		
1/28	2ND READING DO PASS MOTION FAILED	46	54

HB 287 INTRODUCED BY WISEMAN, ET AL. LC1108 DRAFTER: CAMPBELL

REVISE SECURITY LAWS

1/17	FISCAL NOTE REQUESTED		
1/17	INTRODUCED		
1/17	FIRST READING		
1/17	REFERRED TO BUSINESS & LABOR		
1/21	FISCAL NOTE RECEIVED		
1/22	HEARING		
1/22	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	96	1
1/28	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO BUSINESS & INDUSTRY		
3/06	HEARING		
3/19	TABLED IN COMMITTEE		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	96	2
4/11	3RD READING CONCURRED AS AMENDED	94	2
4/19	SIGNED BY SPEAKER		
4/25	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 533		
	EFFECTIVE DATE: 10/01/97		

HB 288 INTRODUCED BY OHS, ET AL. LC0672 DRAFTER: MITCHELL

CLARIFY THE LIABILITY PROVISIONS FOR PERSONS WHO MAKE
 VOLUNTARY CONTRIBUTIONS TO A SPECIFIC REMEDIATION ACCOUNT

1/17 INTRODUCED

INTRODUCED BY House BILL NO. 287
Wiseman, Johnson, Euer

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING THE ACTIVITIES OF FEDERAL COVERED ADVISERS; EXEMPTING MONTANA FROM THE PROVISIONS OF THE PHILANTHROPY PROTECTION ACT; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107, 30-10-110, 30-10-201, 30-10-202, 30-10-207, 30-10-209, AND 30-10-303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

1 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether
2 characterized as precious, semiprecious, or otherwise;

3 (iii) any fuel, whether liquid, gaseous, or otherwise;

4 (iv) foreign currency; and

5 (v) all other goods, articles, products, or items of any kind.

6 (b) Commodity does not include:

7 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal
8 contains;

9 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
10 and offered and sold by the owner or lessee of the real property; or

11 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through
12 private sale by the owner.

13 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
14 effective date of this subsection.

15 (5) "Commodity futures trading commission" means the independent regulatory agency established
16 by congress to administer the Commodity Exchange Act.

17 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
18 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
19 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery
20 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
21 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
22 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence
23 the contrary, is presumed to be offered or sold for speculation or investment purposes.

24 (b) A commodity investment contract does not include a contract or agreement that requires, or
25 under which the purchaser receives, within 28 calendar days after the payment in good funds of a
26 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
27 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
28 total amount of each commodity to be purchased under the contract or agreement when the commodity
29 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien
30 arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is:

(i) registered under section 203 of the Investment Advisers Act of 1940; or

(ii) excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

(b) A person acting as a federal investment adviser who has not promptly remedied the nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the nonpayment or underpayment from the commissioner is not a federal covered adviser.

(9) (a) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after written notification from the commissioner has been received is not a federal covered security.

~~(8)~~(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

~~(9)~~(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

1 (ii) a bank, savings institution, trust company, or insurance company;

2 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
3 of the person's profession or who does not accept or receive, directly or indirectly, any commission
4 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
5 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
6 securities for investment purposes;

7 (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(c)
8 is solely incidental to the conduct of business and for which the broker-dealer does not receive special
9 compensation;

10 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or
11 financial publication or service, whether communicated in hard copy form or by electronic means or
12 otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation
13 of each client;

14 (vi) a person whose advice, analyses, or reports relate only to securities exempted from
15 30-10-104(1);

16 (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(c)
17 is solely incidental to the practice of the person's profession; or

18 (viii) a federal covered adviser; or

19 ~~(viii)(ix)~~ (ix) other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by
20 rule or order designate.

21 ~~(10)(12)~~ (12) (a) "Investment adviser representative" means any partner of, officer of, director of, or
22 a person occupying a similar status or performing similar functions, or other individual employed by
23 associated with an investment adviser, except clerical or ministerial personnel, who:

24 (i) makes any recommendation or otherwise renders advice regarding securities to clients;

25 (ii) manages accounts or portfolios of clients;

26 (iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

27 (iv) supervises employees who perform any of the foregoing.

28 (b) Investment adviser representative does not include a salesperson registered pursuant to
29 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental
30 to the conduct of business as a salesperson and for which the salesperson does not receive special

1 compensation other than fees relating to the solicitation or offering of investment advisory services of a
2 registered investment adviser.

3 ~~(11)~~(13) "Issuer" means any person who issues or proposes to issue any security, except that with
4 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to
5 certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~for~~
6 persons performing similar functions, ~~or of the fixed, restricted management, or unit type, the term "issuer"~~
7 means the person or persons performing the acts and assuming the duties of depositor or manager pursuant
8 to the provisions of the trust or other agreement or instrument under which the security is issued.

9 ~~(12)~~(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

10 ~~(13)~~(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a
11 corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the
12 beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political
13 subdivision of a government.

14 ~~(14)~~(16) "Precious metal" means the following, in coin, bullion, or other form:

- 15 (a) silver;
- 16 (b) gold;
- 17 (c) platinum;
- 18 (d) palladium;
- 19 (e) copper; and
- 20 (f) other items as the commissioner may by rule or order specify.

21 ~~(15)~~(17) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

22 ~~(16)~~(18) (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a
23 security or interest in a security for value.

24 (b) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer
25 to buy a security or interest in a security for value.

26 (c) Any security given or delivered with or as a bonus on account of any purchase of securities or
27 any other thing is considered to constitute part of the subject of the purchase and to have been offered and
28 sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or
29 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
30 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert

1 into another security of the same or another issuer, is considered to include an offer of the other security.

2 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents
3 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
4 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
5 Salesperson does not include an individual who represents:

6 (a) an issuer in:

7 ~~(a)~~(i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

8 ~~(b)~~(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson
9 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

10 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
11 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;

12 or

13 ~~(c)~~(iv) effecting transactions with existing employees, partners, or directors of the issuer if no
14 commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

15 or

16 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
17 of the Securities Exchange Act of 1934.

18 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
19 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
20 mean the federal statutes of those names as amended before or after July 1, 1961.

21 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
22 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
23 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription
24 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
25 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
26 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
27 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
28 any interest in a security or based on the value of a security, or any certificate of interest or participation
29 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
30 purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(21)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 2. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security, ~~including a revenue obligation~~, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless ~~such~~ the enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through ~~(14)~~ (15) of this section;

(2) any security issued or guaranteed by Canada, ~~any~~ a Canadian province, ~~any~~ a political subdivision of ~~any such~~ a province, or ~~any~~ an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any~~ a bank organized under the laws of the United States or ~~any~~ a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any~~ a federal savings and loan association or ~~any~~ a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by ~~any~~ a federal credit union or ~~any~~ a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

1 (6) any security issued or guaranteed by ~~any~~ a railroad, other common carrier, public utility, or
2 holding company which is:

3 (a) subject to the jurisdiction of the interstate commerce commission;

4 (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a
5 subsidiary of ~~such~~ a registered holding company within the meaning of that act;

6 (c) regulated in respect of its rates and charges by a governmental authority of the United States
7 or any state or municipality; or

8 (d) regulated in respect to the issuance or guarantee of the security by a governmental authority
9 of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in
10 respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by
11 ~~such~~ the railroad or public utility would be exempt under this subsection;

12 (7) any security that meets all of the following conditions:

13 (a) if the issuer is not organized under the laws of the United States or a state, it has appointed
14 a duly authorized agent in the United States for service of process and has set forth the name and address
15 of ~~such~~ the agent in its prospectus;

16 (b) a class of the issuer's securities is required to be and is registered under section 12 of the
17 Securities Exchange Act of 1934 and has been ~~so~~ registered for the 3 years immediately preceding the
18 offering date;

19 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
20 7 years, ~~for~~ during the issuer's existence if that period is less than 7 years, in the payment of:

21 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
22 borrowed money; or

23 (ii) rentals under leases with terms of 3 years or more;

24 (d) the issuer has had consolidated net income, ~~{before extraordinary items and the cumulative~~
25 ~~effect of accounting changes,~~ of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
26 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, ~~but~~
27 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
28 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year"
29 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
30 available, provided that ~~such~~ the statements cover a fiscal period ended not more than 15 months from the

1 commencement of the offering.

2 (e) if the offering is of stock or shares, other than preferred stock or shares, ~~such~~ the securities
3 have voting rights and ~~such~~ rights ~~include~~ including the right to have at least as many votes per share and
4 the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes
5 of stock or shares, except as otherwise required by law;

6 (f) if the offering is of stock or shares, other than preferred stock or shares, ~~such~~ the securities are
7 owned beneficially or of record on any date within 6 months prior to the commencement of the offering
8 by at least 1,200 persons and on ~~such~~ that date there are at least 750,000 ~~such~~ of the shares outstanding
9 with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In
10 connection with the determination of the number of persons who are beneficial owners of the stock or
11 shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon
12 written information furnished by the record owners.

13 (8) any security issued by any person organized and operated not for private profit but exclusively
14 for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the
15 issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice
16 specifying the terms of the offer and the commissioner does not disallow the exemption in writing within
17 ~~such~~ the 20-day period;

18 (9) any commercial paper ~~which~~ that arises out of a current transaction or the proceeds of which
19 have been or are to be used for the current transaction and ~~which~~ that evidences an obligation to pay cash
20 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such~~ the paper
21 which is likewise limited or any guarantee of ~~such~~ the paper or of any ~~such~~ renewal, when ~~such~~ the
22 commercial paper is sold to banks or insurance companies;

23 (10) any investment contract issued in connection with an employee's stock purchase, savings,
24 pension, profit-sharing, or similar benefit plan;

25 (11) any security for which the commissioner determines by order that an exemption would better
26 serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed
27 in 30-10-209(4).

28 (12) any security listed or approved for listing upon notice of issuance on the New York stock
29 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
30 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any

1 other stock exchange registered with the federal securities and exchange commission and approved by the
2 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
3 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
4 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
5 otherwise condition the terms under which any security may be exempt under this subsection.

6 (13) any national market system security listed or approved for listing upon notice of issuance on
7 the national association of securities dealers automated quotation system or any other national quotation
8 system approved by the commissioner; any other security of the same issuer that is of senior or
9 substantially equal rank; any security called for by subscription rights or warrants so listed or approved,
10 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
11 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
12 may be exempt under this subsection.

13 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
14 by any insurer organized and authorized to transact business under the laws of any state;

15 (15) any security for which an offer or sale is not directed to or received by a person in this state,
16 and the issuer does not maintain a place of business in the state."

17
18 **Section 3.** Section 30-10-107, MCA, is amended to read:

19 **"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
20 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
21 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
22 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
23 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
24 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
25 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
26 cooperate with the securities administrators of the other states and the securities and exchange commission
27 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
28 in the form and content of registration statements, applications, and reports wherever practicable.

29 (2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to
30 use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~

not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes~~ do not authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~ information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~ do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner ~~in his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements ~~which~~ that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ that have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under ~~such~~ rules ~~as~~ the commissioner prescribes.

(6) Upon request and at ~~such a reasonable charges as he prescribes~~ charge, the commissioner shall furnish to any person photostatic or other copies, ~~{certified under his seal of office if requested,}~~ of any entry in the register or any document ~~which~~ that is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any certified copy ~~so certified~~ is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

1 **Section 4.** Section 30-10-110, MCA, is amended to read:

2 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
3 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
4 to buy is made and accepted in this state.

5 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to
6 buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

7 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
8 either party is then present in this state, when the offer either originates from this state or is directed by
9 the offeror to this state and received at the place to which it is directed or at any post office in this state
10 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
11 ~~received by the offeree in this state is not made in this state.~~

12 (4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance
13 is communicated to the offeror in this state and acceptance has not previously been communicated to the
14 offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state
15 whether or not either party is then present in this state, when the offeree directs it to the offeror in this
16 state, reasonably believing the offeror to be in this state, and it is received at the place to which it is
17 directed or at any post office in this state in the case of a mailed acceptance.

18 (5) An offer to sell or to buy is not made in this state when:

19 (a) the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona
20 fide newspaper or other publication of general, regular, and paid circulation ~~which~~ that is:

21 (i) not published in this state; or

22 (ii) published in this state but has had more than two-thirds of its circulation outside this state
23 during the past 12 months; or

24 (b) a radio or television program originating outside this state is received in this state.

25 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers
26 and investment adviser representatives are concerned, apply when any act instrumental in effecting
27 prohibited conduct is done in this state, whether or not either party is then present in this state."

28
29 **Section 5.** Section 30-10-201, MCA, is amended to read:

30 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**

investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the person is ~~se~~ registered under parts 1 through 3 of this chapter;

~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

~~(c)~~(b) the person does not have a place of business in the state and the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) federal covered advisers;

~~(iii)~~(iv) broker-dealers;

~~(iv)~~(v) banks;

~~(v)~~(vi) trust companies;

~~(vi)~~(vii) savings and loan associations;

~~(vii)~~(viii) employee benefit plans with assets of not less than \$1 million;

~~(viii)~~(ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

~~(ix)~~(x) other institutional investors as are designated by rule or order of the commissioner; or

~~(c)~~(c) the person does not have a place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the persons to whom the communications are directed are then present in this state the preceding 12-month period the person has not had more than five clients who are residents of this state.

(4) Except for advisers whose only clients are clients listed in subsection (3)(b), it is unlawful for

1 a federal covered adviser to conduct advisory business in this state unless the federal covered adviser
2 complies with the provisions of subsection (6)(b).

3 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
4 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
5 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
6 3.

7 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
8 investment adviser representative who maintains a place of business in this state unless the investment
9 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
10 3.

11 ~~(4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
12 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
13 ~~representative may apply for registration by filing an application in the form that the commissioner~~
14 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
15 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
16 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
17 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
18 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
19 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
20 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
21 ~~who may suffer loss by reason of a failure to comply.~~

22 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b),
23 a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
24 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
25 securities and exchange commission that the commissioner requires by rule or order.

26 ~~(5)(7)~~ The application must contain whatever information the commissioner requires. A registration
27 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may
28 not be withdrawn before the commissioner approves or denies the registration, without the express written
29 consent of the commissioner.

30 ~~(6)(8)~~ When the registration requirements are met, the commissioner shall make the registration

effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

~~(7)(9)~~ Except as provided in subsection (6), Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative:

(a) is effective until December 31 following the registration or any other time as the commissioner may by rule adopt; and

(b) may be renewed pursuant to subsection (11).

~~(8)(10)~~ (a) The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

~~(9)(b)~~ The registration of an investment adviser representative is not effective during any period when the person is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner. When an investment adviser representative begins or terminates a connection with a federal covered adviser, the investment adviser representative shall promptly notify the commissioner.

~~(10)(11)~~ Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration of the registration or notice filing, an application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser representative filed by the applicant~~ or notice filing, and payment of the ~~prescribed~~ fee prescribed by 30-10-209. ~~and, in the case of a~~ A broker-dealer who is not a member of NASD, inc., by filing is required to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

~~(11)(12)~~ (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case

1 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
2 adviser, every ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and
3 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
4 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3 years~~
5 ~~unless the period the commissioner prescribes otherwise for particular types of records~~ by rule or order.
6 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
7 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
8 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
9 the protection of investors.

10 (b) The commissioner may require investment advisers to furnish or disseminate certain information
11 as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

12 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
13 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
14 correcting amendment.

15 ~~(12)~~ (13) The commissioner may by order deny, suspend, or revoke registration of any
16 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
17 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
18 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
19 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
20 adviser:

21 (a) has filed an application for registration under this section that, as of its effective date or as of
22 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
23 or contained any statement that was, in the light of the circumstances under which it was made, false or
24 misleading with respect to any material fact;

25 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
26 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor
27 law;

28 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
29 business or any felony;

30 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging

1 in or continuing any conduct or practice involving any aspect of the securities business;

2 (e) is the subject of an order of the commissioner denying, suspending, or revoking registration as
3 a broker-dealer, salesperson, investment adviser, or investment adviser representative;

4 (f) is the subject of an adjudication or determination, within the past 5 years, by a securities or
5 commodities agency or administrator of another state or a court of competent jurisdiction, that the person
6 has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act
7 of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or
8 commodities law of any other state;

9 (g) has engaged in dishonest or unethical practices in the securities business;

10 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
11 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
12 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
13 as to the broker-dealer or investment adviser;

14 (i) has not complied with a condition imposed by the commissioner under this section or is not
15 qualified on the basis of such factors as training, experience, or knowledge of the securities business;

16 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
17 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
18 corrected; or

19 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
20 representatives or employees to assure their compliance with this act.

21 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
22 of a fact or transaction known to the commissioner when registration became effective unless the
23 proceeding is instituted within 30 days after the date on which the registration became effective.

24 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
25 determination of any proceeding under this section.

26 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) of this section, the commissioner
27 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
28 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
29 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
30 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not

1 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
2 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
3 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

4 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
5 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
6 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
7 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
8 by order cancel the registration or application.

9 ~~(17)~~(18) The commissioner may, after suspending or revoking registration of any broker-dealer,
10 salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000
11 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is
12 in addition to all other penalties imposed by the laws of this state and must be collected by the
13 commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine
14 under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any
15 broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine
16 referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the
17 broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may
18 be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer,
19 salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a
20 forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

21 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
22 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
23 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
24 representative if the sole proprietor meets the examination requirements established by the commissioner
25 by rule.

26 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general
27 securities principal's examination is not required to also pass the uniform investment adviser law
28 examination. The commissioner shall by rule provide for a form that a person who passes the general
29 securities principal's examination shall file with the commissioner as a verification of having passed the
30 examination unless the commissioner can verify electronically that the person has passed the exam."

Section 6. Section 30-10-202, MCA, is amended to read:

"30-10-202. **Registration of securities.** It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless:

(1) ~~such the~~ security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter; or

(2) for a federal covered security, the security has been filed with the commissioner pursuant to [section 10] and the fee prescribed in 30-10-209 has been paid."

Section 7. Section 30-10-207, MCA, is amended to read:

"30-10-207. **Denial, suspension, and revocation of registration of securities.** (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement ~~which that~~ was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated, ~~in connection with the offering,~~ by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement

1 under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

2 (ii) ~~he~~ may not enter an order under this subsection (1)(c) on the basis of an injunction entered
3 under any other state law unless that order or injunction was based on facts ~~which~~ that would currently
4 constitute a ground for an order under this section;

5 (d) the issuer's enterprise or method of business includes or would include activities ~~which~~ that
6 are illegal where performed;

7 (e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

8 (f) when a security is sought to be registered by notification, it is not eligible for ~~such~~ registration
9 by notification;

10 (g) when a security is sought to be registered by coordination, there has been a failure to comply
11 with the undertaking required by 30-10-204(1)(g);

12 (h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner
13 may enter only a denial order under this subsection, and ~~he~~ shall vacate any ~~such~~ denial order when the
14 deficiency has been corrected; or

15 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'
16 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
17 amounts or kinds of options.

18 (2) The commissioner may not enter a suspension or revocation order against an effective
19 registration statement on the basis of a fact or transaction known to ~~him~~ the commissioner when the
20 registration statement became effective.

21 (3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly
22 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
23 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
24 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~he~~ a hearing
25 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
26 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
27 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."

28
29 **Section 8.** Section 30-10-209, MCA, is amended to read:

30 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1

through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the ~~first~~ initial year of registration or notice filing a registration fee of \$200 for the first \$100,000 of initial issue or portion thereof of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year, ~~even though the maximum fee was paid the preceding year~~. The ~~additional registration~~ renewal fee may not be less than \$200 or more than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, the registrant shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio registration fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio registration fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson who is dually registered as an investment adviser representative with a broker-dealer dually registered as an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

(c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each

1 annual renewal.

2 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
3 cost to the department.

4 (4) For a request for an exemption under 30-10-105(15), the fee must be established by the
5 commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1
6 through 3 of this chapter, the fee is \$50.

7 (5) All fees are considered fully earned when received. In the event of overpayment, only those
8 amounts in excess of \$10 may be refunded.

9 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
10 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
11 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
12 general fund."
13

14 **Section 9.** Section 30-10-303, MCA, is amended to read:

15 **"30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the (1) The~~
16 ~~fact that an application for registration under 30-10-201(4)(6) or a registration statement under 30-10-203,~~
17 ~~30-10-204, or 30-10-205 has been filed nor or~~ the fact that a person or security is effectively registered
18 ~~constitutes~~ does not constitute a finding by the commissioner that any document filed under parts 1
19 through 3 of this chapter is true, complete, and not misleading.

20 ~~(2) Neither any such~~ The fact that an application for registration has been filed or a person or
21 security effectively registered as provided in subsection (1) or nor the fact that an exemption or exception
22 is available for a security or a transaction ~~means~~ does not mean that the commissioner has passed in any
23 way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or
24 transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client
25 any representation inconsistent with this section."
26

27 **NEW SECTION. Section 10. Federal covered securities.** (1) The commissioner may require an
28 issuer to file any or all of the following documents with respect to a federal covered security provided for
29 in section 18(b)(2) of the Securities Act of 1933:

30 (a) documents that are part of a current federal registration statement filed with the securities and

1 exchange commission or amendments to a current registration statement filed with the securities and
2 exchange commission;

3 (b) a consent to the service of process signed by the issuer and payment of the fee required in
4 30-10-209; and

5 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
6 state.

7 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
8 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
9 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
10 fee prescribed in 30-10-209.

11 (3) The commissioner may require the filing of any document filed with the securities and exchange
12 commission under the Securities Act of 1933, with respect to a federal covered security under section
13 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
14 in 30-10-209.

15 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
16 covered security if the commissioner finds that the order is in the public interest and there is a failure to
17 comply with any requirement of this section.

18 (5) The commissioner may waive any of the provisions of this section.
19

20 **NEW SECTION. Section 11. Exemption.** The state of Montana is exempt from the provisions of
21 the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(c) of that act.
22

23 **NEW SECTION. Section 12. Codification instruction.** (1) [Section 10] is intended to be codified
24 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
25 to [section 10].

26 (2) [Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the
27 provisions of Title 30, chapter 10, apply to [section 11].
28

29 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

3 -END-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on January 22, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 275; HB 281; HB 286; HB 287
(1/17/97)
Executive Action: HB 164

HEARING ON ~~HB 47~~ HB 287

Opening Statement by Sponsor: REP. BILL WISEMAN, H. D. 47
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .5; Comments: None.}

Proponents' Testimony:

Renee Erdmann, Chief of Enforcement, State Auditor's Office.

EXHIBIT 2.

{Tape: 1; Side: 1; Approx. Time Count: 2.8; Comments: None.}

David Dennis, D. A. Davidson and Co.

{Tape: 1; Side: 1; Approx. Time Count: 7.1; Comments: None.}

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: Rep. Wiseman closed.

{Tape: 1; Side: 1; Approx. Time Count: 8.1; Comments: None.}

HEARING ON HB 281

Opening Statement by Sponsor: REP. BILL RYAN, H. D. 44 introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: 10.4; Comments: None.}

Proponents' Testimony:

Jerry Driscoll, MT Building Trades and Contractors.

{Tape: 1; Side: 1; Approx. Time Count: 12.4; Comments: None.}

Doris Romaisch, MT Apprenticeship and Training Assn. EXHIBIT 3 & 4.

{Tape: 1; Side: 1; Approx. Time Count: 15.0; Comments: None.}

LeAnn Jones, student. EXHIBIT 5.

{Tape: 1; Side: 1; Approx. Time Count: 19.2; Comments: None.}

Jerry Snyder, Student. EXHIBIT 6.

{Tape: 1; Side: 1; Approx. Time Count: 20.; Comments: None.}

Carol Schweitzer, MT Contractors Assn.

{Tape: 1; Side: 1; Approx. Time Count: 22.0; Comments: None.}

Darrell Holzer, AFL-CIO.

{Tape: 1; Side: 1; Approx. Time Count: 23.6; Comments: None.}

Opponents' Testimony:

Don Chance, MT Building Industrial Assn.

{Tape: 1; Side: 1; Approx. Time Count: 24.8; Comments: None.}

Jim Brown, Building Codes Bureau, Dept. of Commerce.

{Tape: 1; Side: 1; Approx. Time Count: 27.1; Comments: None.}

NSMIA preempts state authority with respect to the review and approval of certain products and applicants. It does so by adopting new terminology that we have incorporated in this bill.

These terms include covered securities⁴ and covered advisers,⁵ which describe those securities players for which the SEC will retain primary jurisdiction. We still retain our investigative and enforcement authority with respect to fraudulent activity in Montana. Also, there is a notice filing requirement that mandates the payment of state fees that were in effect prior to enactment of NSMIA. That is important to Montana because we currently collect about \$5.5 million dollars each biennium that are general fund revenue from issuers of securities. Additionally, the states retain the ability to require issuers of "covered securities" to file documents that have been filed with the SEC. In that way, Montana investors will still have access to information on file with the office.

NSMIA divides the responsibility for registration of

Good morning Mr. Chairman and members of the Committee.

My name is Renee Erdmann and I am the Chief of Securities Enforcement in the State Auditor's Office.

House Bill 287 amends the Montana Securities Act to reflect changes mandated by Congress through the National Securities Markets Improvement Act of 1996 (NSMIA). The bill also contains some housekeeping matters that the industry and my office have agreed are of a housekeeping nature.

Although opposed by the states, NSMIA was enacted on October 11, 1996 and was effective immediately. It received strong support from the securities industry.

NSMIA will change the way we go about regulating securities. This bill allows Montana to effect that change and ensure consistent requirements with the Securities and Exchange Commission (SEC) and other states with ^{regard} ~~respect~~ to the manner in which we regulate the securities industry.

investment advisers between the SEC and the states. the SEC will have sole jurisdiction over investment advisers that manage more than \$25 million in assets. States will have sole jurisdiction over those who have less than that amount. Of the 58 domestic advisers registered in Montana, only two, Financial Aims and Anna Corporation, will fall under SEC jurisdiction.

With this bill, we would accomplish a smooth transition in implementing provisions designed to standardize and streamline the regulation of securities in this country.

This is a technical bill. It has been reviewed by the Securities Industry Association. I understand that they are in agreement with us that this bill complies with the federal legislation. We urge your support for this bill.

Beth O'Halloran, our new securities attorney, and I are available to answer any questions you might have.

Thank you Mr. Chairman and members of the committee.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on January 23, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 238; HB 266; HB 262
(1/15/97)

Executive Action: HB 238; HB 275; HB 232; HB
180; HB 281; HB 287; HB 241

HEARING ON HB 238

Opening Statement by Sponsor: REP. RAY PECK, H.D. 91 introduced the bill.

EXECUTIVE ACTION ON HB 287

Motion: REP. GILLAN MOVED HB 287 DO PASS.

{Tape: 2; Side: 2; Approx. Time Count: 23.1; Comments: None.}

Motion/Vote: REP. GILLAN MOVED TO ADOPT GILLAN AMENDMENTS. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 23.1; Comments: None.}

Discussion:

{Tape: 2; Side: 2; Approx. Time Count: 23.6; Comments: None.}

Motion/Vote: REP. TUSS MOVED HB 287 DO PASS AS AMENDED. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 24.2; Comments: None.}

EXECUTIVE ACTION ON HB 241

Motion: REP. SQUIRES MOVED HB 241 DO PASS.

{Tape: 2; Side: 2; Approx. Time Count: 25.4; Comments: None.}

Motion/Vote: REP. PAVLOVICH MOVES TO ADOPT KOTTEL AMENDMENTS. Motion carried unanimously.

{Tape: 2; Side: 2; Approx. Time Count: 27.7; Comments: None.}

Discussion:

{Tape: 2; Side: 2; Approx. Time Count: 31.2; Comments: None.}

Motion/Vote: REP. SQUIRES MOVES HB 241 DO PASS AS AMENDED.

Motion carried roll call vote 11-8. EXHIBIT 6.

{Tape: 3; Side: 1; Approx. Time Count: 3.7; Comments: None.}

SENATE BUSINESS & INDUSTRY

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0185	BERGSAGEL, ERNEST	2/19	3/04	EXEMPT FROM REGISTRATION STOCK ISSUED BY COOPERATIVE ASSOCIATION	CONCUR AS AMENDED 03/06 VOTE: 6-0	3/07
HB0207	GRADY, ED	1/23	2/06	REVISE PROVISIONS REGARDING COMMITTEE ON TELECOMMUNICATIONS FOR DISABLED	CONCUR AS AMENDED 02/06 VOTE: 6-0	2/08
HB0214	GRADY, ED	1/31	3/04	REVISE PETROLEUM TANK RELEASE COMPENSATION LAW	CONCUR 03/06 VOTE: 6-0	3/07
HB0225	KITZENBERG, SAM	2/07	3/05	ALLOWING ABOVEGROUND TANKS IN SMALL COMMUNITIES	CONCUR 03/06 VOTE: 6-0	3/07
HB0238	PECK, RAY	1/28	3/26	GENERALLY REVISE CREDIT UNION LAW - INCREASE LOAN AMOUNT TO OFFICERS, ETC.	CONCUR AS AMENDED 03/26 VOTE: 6-0	3/27
HB0241	KOTTEL, DEB	2/19	3/05	REQUIRE NONPROFIT CORPORATION DISCLOSE IF TAX EXEMPT & ADMINISTRATIVE COSTS	TABLED ON 03/06 VOTE: 6-0	
HB0262	BARNETT, JOE	2/03	3/06	GENERALLY REVISE BRANCH BANKING LAW - AMEND BANK MERGER PROVISIONS	CONCUR 03/07 VOTE: 6-0	3/07
HB0266	COCCHIARELLA, VICKI	2/17	3/06	REQUIRE PROOF OF LICENSE FOR PERSON REQUIRING LICENSE RE: PLUMB & ELECT WORK	CONCUR AS AMENDED 03/07 VOTE: 4-2	3/11
HB0267	MASOLO, GAY ANN	3/04	3/11	LIABILITIES AND RESPONSIBILITIES ASSOCIATED WITH AMUSEMENT RIDES	TABLED ON 03/25 VOTE: 5-1	
HB0287	WISEMAN, WILLIAM	1/29	3/06	3/19 GEN'L REVISE OF SECURITY LAWS - REGULATING FED. COVERED ADVISER & SECURITY	CONCUR AS AMENDED 03/25 VOTE: 6-0	3/26
HB0310	PAVLOVICH, BOB	2/05	3/07	CLARIFY THE ESTABLISHMENT AND MAINTENANCE OF BEER PRICES BY WHOLESALERS	CONCUR 03/07 VOTE: 6-0	3/07
HB0330	WISEMAN, WILLIAM	2/03	3/07	LOCAL GOV'T GROUP SELF-INS. PROGRAM MAY INVEST IN U.S. DIRECT OBLIGATIONS	CONCUR 03/07 VOTE: 6-0	3/11

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 6, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 262; HB 266; HB 287;
2/24/97

Executive Action: HB 185; HB 214; HB 225
HB 241 TABLED

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

HEARING ON HB 262

Sponsor: REP. JOE BARNETT, HD 32, BELGRADE.

Proponents: Keith Colbo, MT Independent Bankers
John Cadby, MT Bankers Assoc.
Tom Ellis, Norwest Bank-Helena
Don Hutchinson, MT Dept. of Commerce

Opponents: None

Don Chance, MT Building Industry Assoc. As this bill was amended by the sponsor in the House we have no difficulty with it and think it is a good idea.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BENEDICT offered an amendment that would state: "who is required to be licensed" so people would not be required to be licensed if they were doing other kinds of work such as just stringing wire in a ditch as a laborer or laying pipe. We don't want to sweep people into being licensed if it is not necessary. REP. COCCHIARELLA responded that such an amendment would be fine.

SEN. HERTEL stated that on the fiscal note it was asking for a half FTE to take care of the extra work load. It seems like the bill would require fewer duties and fewer people in the field. REP. COCCHIARELLA said that the Department would not ask for more money and the cost would be absorbed into their current budget. There may be more reports to be processed and investigated and that is the purpose of the half FTE.

Closing by Sponsor:

REP. COCCHIARELLA closed. It is the intent of this legislation to make it less cumbersome on contractors, make more efficiency in government and not to expand any more licensing.

{Tape: 1; Side: 2; Approx. Time Count: 10:06 AM; Comments: A 10 MINUTE BREAK WAS TAKEN.}

HEARING ON HB 287

Sponsor: REP. WILLIAM WISEMAN, HD 41, GREAT FALLS

Proponents: Beth O'Halloran, State Auditor's Office
Ward Shanahan, Investment Companies Institute
Steve Browning, Montana Community Foundation
Jim Soft, Executive Vice President, Yellowstone
Boys & Girls Ranch Foundation

Opponents: None

Opening Statement by Sponsor:

REP. BILL WISEMAN, HD 41, GREAT FALLS. This is a department bill. I have been a stockbroker for 19 years and agreed to carry the bill. We had some health problems in December and I didn't get to see the bill till it was too late to be submitted as a department bill. I don't know a great deal about the ins and outs of this bill and people from the department are here to explain the bill. Thank you.

Proponents' Testimony:

Beth O'Halloran, Staff Attorney, Securities Department of the State Auditor's Office. I will give my testimony and hand in a written copy of same (EXHIBIT 3). There are two sets of amendments. The first set (EXHIBIT 4) are amendments that the Investment Companies Institute and the State Auditor's Office have agreed upon. The second set (EXHIBIT 4A) are amendments that address the Philanthropic Protection Act. I would like to submit a newspaper article (EXHIBIT 5) in support of my testimony.

Ward Shanahan, Attorney, Investment Companies Institute. We are in agreement with the Department with respect to the amendments that **Ms. O'Halloran** handed out. I would point out for the staff legal advisor that we should have an amendment to page 1, line 12 to put in 3010-206 and 3010-301. I don't believe it is listed in **Ms. O'Halloran's** list of amendments. I had a prepared set of amendments (EXHIBIT 6) that I handed to the **Chairman** and will give the committee copies of that. This one contains all of the amendments that **Ms. O'Halloran** is talking about as well as the ones we disagree on. Hopefully, I will have a memorandum to you shortly that will lay out what those disagreements are. Specifically, in answer to **SEN. BENEDICT'S** comments with respect to loss of state control with respect to the banking bill you heard earlier, we have somewhat the same issue here. Congress comes in with a law which preempts state law in a number of respects. It is to the Department's credit that in the places we disagree these are the places the Department feels that it is losing control over the securities industry. We are hoping to work that out either with an agreement with a concurrent jurisdiction or at least a legal explanation to you so that you will know the reason why we disagree. The Investment Companies Institute represents primarily the mutual fund industry in the U. S. and so has a lot of dollars and securities rolling on this particular kind of thing. With everyone's retirement plan involved in this business these days, this is an important piece of legislation. We will try to make it as understandable as possible. It is not the most readable piece of legislation. We do endorse the bill with the limits we have agreed on and hope that we will get favorable consideration when we come to an agreement with the Department.

Steve Browning, MT Community Foundation. I would direct your attention to one part of the bill. On page 23, new section 11, lines 20 and 21, this was stricken in the House committee because of problems that exemption would cause certain charities in Montana. I have asked **Jim Soft** if he would come to testify for the committee because he is knowledgeable on the impacts of the Philanthropy Protection Act. Thank you.

Jim Soft, Yellowstone Boys & Girls Ranch Foundation. We are in opposition to the second set of amendments (EXHIBIT 4A) that would reinsert language that was amended out in the House. I

will give my testimony and hand in a written statement (EXHIBIT 7).

{Tape: 1; Side: B; Approx. Time Count: 10:29 AM; Comments: N/A.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked about a discrepancy between two of the testimonies. Ms. O'Halloran replied there are two issues with respect to the amendment that we have offered regarding the Philanthropy Protection Act. First is the state's choice as to when they would like to use their enforcement authority against potentially fraudulent securities. We are concerned about those who would perpetrate affinity fraud which is a type of fraud which manifests itself in targeting offers to persons with an affinity for certain causes or ideals, usually charitable or religious. This is what we are trying to address with the amendment. We don't believe the anti-fraud provisions are enough to enforce the Securities Act of Montana against those who would use the exemption from registration that would be permitted under the Federal Law. A side issue of this is that of local control that the federal government allows the state with respect to preemption of these types of securities registration. I believe it was a factor of recognizing that charities often operate on a mutual level. Secondly, the idea is that Montana needs to maintain regulation of securities offerings at the Montana level if the securities offerings are going to be more regional in nature.

SEN. CASEY then asked Mr. Soft the same question about over regulation and asked if the concern was with the state opting out. Mr. Soft replied that he wasn't sure about over regulation but with all due respect with the state attempting to catch the bad guys, opting out from the Philanthropy Protection Act will cause regulation for all charities of five years and under; and for charities five years and older, a simple change in the law in Montana will put them in the regulatory process where they are going to potentially be encumbered by that very process taking away from the time and energy that it takes to do their good work. Over regulating the good charities is not the way to go. The federal law would preempt Montana from making charity trusts be regulated as a security. It would open the doors for litigation.

SEN. WILLIAM CRISMORE asked Ms. O'Halloran if the whole group has worked together on this bill or are there separate amendments and will they get together now? Ms. O'Halloran said that they had prepared the amendments that the committee has now. These were sent to Mr. Soft yesterday. They had talked to the UN Foundation who also had problems with the original piece of legislation. It was in the spirit of cooperation that we came up with this

compromise amendment. **Ms. O'Halloran** tried to explain something? She said that she thought **Mr. Soft** said that the target of preemption was for specific types of instruments. She reads the federal legislation: preemption of registration of securities for certain types of organizations. She was not sure if there was a problem or not. **SEN. CRISMORE** said that the groups must get together and return with a consensus. He could not follow the different groups and what their problems were.

SEN. BEA MCCARTHY asked about the first set of amendments from the Department on page 22, number 14, and is this another fraud section that is being amended into the bill? **Ms. O'Halloran** replied that in respect to the section that has been pulled in, the reason it was pulled in was because of some inconsistencies with the Montana Securities Act and the federal legislation regarding investment advisors and federally covered investment advisors and the types of regulation that the SEC has over the advisory contracts. With respect to the general application of 3010-301, that section can be applied to any type of security that is offered in Montana whether or not it is registered in Montana. This is the anti-fraud provisions we wanted and this is existing law. It does cover fraud by affinity offers and this is the section the commissioner would retain for enforcement authority with respect to charitable groups that fall under the federal preemption.

SEN. MCCARTHY then asked about the amendments that **Mr. Shanahan** submitted, and has the Department worked through those with him because some are alike and other are not? **Ms. O'Halloran** replied that they had gone through these amendments with **Mr. Shanahan** and determined which ones we agreed with. The ones we agreed upon have been put into the Department's amendments.

SEN. MCCARTHY asked **Mr. Shanahan** about number 10 on his amendments, and is the new section which is very lengthy

.

{Tape: 2; Side: A; Approx. Time Count: 10:46 AM; Comments: ONE SENTENCE LOST.}

Mr. Shanahan replied that number 9, 10, 11, 12, 13, 14, 25 and maybe 26 are the ones that we do not agree on. If something has been approved by the Securities Exchange Commission, you can just file with the Montana Securities Department and they will approve it because the SEC has already approved it. That is what notice filing is. Number 10 is the big disagreement. The Investment Companies Institute is in Virginia and we are doing everything by fax which is a bit slow and we are trying to work with the Department to clarify these issues and come to an agreement.

SEN. DEBBIE SHEA asked the sponsor how all this is going to play if it heads back to the House? **REP. WISEMAN** expressed his embarrassment over the presentation of this bill. He sympathizes with the committee. Congress changed this law in 1996 and why

Mr. Shanahan and his people can't figure out that the state would do something is amazing to me. I was contacted yesterday and was told that they were going to do something and that is why these amendments were not put into the House committee. There was the problem with the philanthropic issue in the House and I thought that had been taken care of. Now it has popped up again. My recommendation to the committee would be to get all these people to agree and if they can't agree, table the bill.

SEN. EMERSON asked Mr. Soft if we do opt out of the federal law dealing with philanthropies, will the federal government be able to come in and control our dealing with philanthropies here in Montana? Mr. Soft said no.

Closing by Sponsor:

REP. WISEMAN closed. I have fairly well made my closing. And again I apologize for the way this bill has been presented. I hope that you can get all parties to agree. I do think the bill is needed. Thank you for your attention and patience.

{Tape: 2; Side: A; Approx. Time Count: 10:53 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 185

Motion: SEN. WILLIAM CRISMORE MOVED HB 185 BE CONCURRED IN.

Amendment Motion: SEN. CRISMORE MOVED HB 185 BE AMENDED, hb018501.a12.

Discussion: SEN. BEA MCCARTHY wanted to know why the date was being changed. SEN. STEVE BENEDICT felt that there was some question with coordination between four states, that in order to meet some of these securities requirements it was necessary to make the date earlier. There was also the possibility that the spring crops would have the opportunity to be finished.

Vote: The MOTION to AMEND HB 185 CARRIED UNANIMOUSLY: 6-0

Motion/Vote: SEN. CRISMORE MOVED HB 185 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY: 6-0

{Tape: 2; Side: A; Approx. Time Count: 10:58 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 214

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 214 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY. 6-0

House Bill 287
Testimony of the State Auditor's Office
March 6, 1997

Good morning Mr. Chairman and members of the committee. My name is Beth O'Halloran and I am the staff attorney for the Securities Department of the State Auditor's Office.

House Bill 287 amends the Montana Securities Act to reflect changes mandated by Congress through the National Securities Markets Improvement Act of 1996 (NSMIA). The bill also contains some matters that the industry and the Securities Department have agreed are of a housekeeping nature.

Although opposed by state regulators, NSMIA was enacted on October 11, 1996, and was effective immediately. It received strong support from the securities industry.

NSMIA will change the way we go about regulating securities. This bill allows Montana to effect that change and ensure consistent requirements with the Securities and Exchange Commission and other states regarding securities regulation.

NSMIA preempts state authority over the review and approval of certain products and applicants. It does so by defining "covered securities" and "covered advisers," and reserving some aspects of regulation of these securities and advisers at the federal level. These terms are incorporated into this bill as "federal covered securities" and "federal covered advisers." These securities and advisers do not represent, by any means, all types of securities or all advisers engaged in business in Montana.

The SEC retains primary jurisdiction over registration and qualification requirements of federal covered securities and advisers; while the states retain concurrent jurisdiction over these securities and advisers regarding the anti-fraud provisions of the Montana Securities Act. Among other things, the anti-fraud provisions permit the Commissioner to take administrative action in misrepresentation and theft cases, or refer them for criminal prosecution.

NSMIA divides the responsibility for registration of investment advisers between the SEC and the states. The SEC will have sole jurisdiction over investment advisers that manage more than \$25 million in assets. States will have sole jurisdiction over those who have less than that amount. Of the 58 domestic advisers registered in Montana, only two, Financial Aims and Anna Corporation, will fall under SEC jurisdiction.

NSMIA further divides the registration responsibility for some types of securities; however, state laws requiring issuers of federal covered securities to make a notice filing and notice filing fee payment to the state are not preempted by NSMIA. HB 287 incorporates notice filing requirements that mandate payment of state fees and filing of documents by issuers of federal covered securities. Establishing the notice filing requirements is especially important because the notice filing requirements allow Montana investors access to information on file with our office. Furthermore, the notice filing fee payment provisions allow the state to maintain the \$5.5 million dollars of revenue collected from issuers of securities in Montana.

There are some NSMIA provisions which require uniformity of books and records retention laws between federal and state regulators. Under these provisions, broker-dealers and investment companies may expect to maintain the same records for the inspection of state regulators, as well as for the inspection of the SEC. This bill incorporates the necessary changes to conform state record retention requirements to this objective of uniformity.

Enactment of this bill assures a smooth transition to the standardized and streamlined framework of securities regulation as envisioned by the drafters of the federal act.

There are a variety of proposed amendments to this bill. I am submitting proposed amendments regarding the Philanthropy Protection Act exempt the Montana Securities Act from registration preemption by the federal legislation. These amendments allow Montana to retain jurisdiction over securities issued by and through charitable, religious, educational, benevolent, fraternal or reformatory organizations, while allowing for a compromise exemption from registration for these types of securities, so long as the charitable organization has enjoyed 501(c)(3) tax exempt status for 5 years.

This amendment permits legitimate Montana not-for-profits, like the UM Foundation or the Yellowstone Boys Ranch, to take advantage of a registration exemption, while still allowing the Montana Securities Department to have a look at the registration materials of newer organizations in order to prevent "affinity fraud." This type of fraud manifests itself in offers of securities targeted at individuals with an affinity for a certain cause or theme, often religious or charitable. Registration requirements in these instances are crucial to the Montana investor because the fly-by-nights may be ordered to cease and desist offering if the Securities Commissioner determines that they are not registered. If the Commissioner has only anti-fraud authority with respect to these scams, Montana investor dollars are gone before the first complaint is filed and are often irretrievable.

Other amendments include those suggested by the Investment Company Institute to the Securities Department, which Mr. Shanahan will probably talk about later. The Securities Department has reviewed ICI's suggested amendments and agrees with some of them, but not all. I have copies of the amendments suggested by ICI with which our Department is in agreement and will leave them for your review. These amendments clarify some of the books and records requirement restrictions enacted in NSMIA, incorporate the notice filing terminology into sections in which they were not incorporated in the earlier draft, and clarify the effect of preemption on the registrations of federal covered advisers and federal covered securities.

The Department, in its discussions with ICI's representative, has made objections to its other amendments. I am available for comment or questions later regarding our specific objections, but it would be more appropriate to allow ICI to present the amendments before commenting further.

Thank you for your time and consideration of this legislation. I urge your favorable consideration of the amendments offered by the Auditor's office and your do pass recommendation on HB 287.

Proposed Amendments
HB 287, 2nd Reading Copy
March 6, 1997

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 3-6-97

BILL NO. HB 287

1. Page 3, line 7.
Strike: "(a)"
2. Page 3, line 8.
Strike: "(i)"
Insert: "(a)"
3. Page 3, line 9.
Strike: "(ii)"
Insert: "(b)"
4. Page 3, lines 11 through 13..
Strike: subsection (b) in its entirety
5. Page 3, line 14.
Strike: "(a)"
6. Page 3, lines 16 through 18.
Strike: subsection (b) in its entirety
7. Page 4, line 22.
Following: "individual"
Insert: ", except clerical or ministerial personnel,"
8. Page 4, line 23.
Strike: "except clerical or ministerial personnel,"
9. Page 16, line 10.
Following: "investment advisers"
Insert: "who are registered or required to be registered"
10. Page 19.
Following: line 8
Insert: "Section 7. Section 30-10-206, MCA, is amended to read:
"**30-10-206. General provisions regarding registration of securities.** (1) A
registration statement may be filed by the issuer, any other person on whose behalf the offering is
to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the
omission of any item of information or document from any registration statement.
(2) (a) The commissioner may require as a condition of registration by qualification or
coordination:
(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

~~—(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or~~

~~—(b) are being offered and sold directly by or for the account of the issuer.~~

(5) No securities registration statement may be withdrawn, whether or not such statement has become effective, without the express written consent of the commissioner.”“

Renumber: subsequent sections

11. Page 21, line 14.

Following: “state,”

Insert: “or for which a notice filing has been submitted,”

12. Page 21, line 15.

Following: “statement”

Insert: “or notice filing”

13. Page 21, line 16.

Following: the first "registrant"

Insert: "or issuer of a federal covered security"

Following: "order"

Strike: ", the registrant"

Insert: "or notice, the person"

14. Page 22.

Following: line 12

Insert: "Section 10. Section 30-10-301, MCA, is amended to read:

"30-10-301. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for his own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than such client, to knowingly effect the sale or purchase of any security for the account of such client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to such transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered, to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits such custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that he has or may have such custody."

Renumber: subsequent sections

15. Page 22, line 16.

Following: "that"

Insert: "a notice filing or"

Following: "(6)"

Insert: ", a notice filing under [2nd reading copy section 10],"

16. Page 22, line 17.

Following: "registered"

Insert: "or a complete notice filing has been made"

17. Page 22, line 20.

Following: "that"

Insert: "a notice filing or"

18. Page 22, line 21.

Following: "registered"

Insert: "or a complete notice filing has been made"

Proposed Amendments
HB 287, Second Reading Copy
March 6, 1997

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4-A
DATE 3-6-97
BILL NO. HB 287

1. Page 1, line 11.
Following: "ACT;"
Insert: "EXCLUDING SECTIONS 30-10-201 THROUGH 30-10-209 FROM THE
PREEMPTIVE EFFECT OF THE PHILANTHROPY PROTECTION ACT;"
2. Page 1, line 22.
Following: "insurance company;"
Strike: "or"
3. Page 1, line 27.
Following: "trustee"
Insert: "; or
(iii) a person effecting a transaction in a security exempted by 30-10-104(16)."
4. Page 6, line 7.
Following: "(10),"
Strike: "or"
Following: "(11)"
Insert: ", or (16)"
5. Page 10.
Following: line 16
Insert: "(16) a security issued by a person organized and operated exclusively for religious,
educational, benevolent, fraternal, charitable, or reformatory purposes if;
(a) the issuer has been exempt from taxation under Section 501(c)(3) of the Internal Revenue
Code for a period of at least 5 years preceding the date of the offer or sale of the security;
(b) the issuer is excluded from the definition of an investment company under section
3(c)(10)(B) of the Investment Company Act of 1940; and
(c) the offer or sale is effected by an officer, director, trustee, employee, or volunteer of the
issuer whose compensation is not based on the number or the value of the donations collected
for the issuer."
6. Page 23.
Following: line 21
Insert: "**NEW SECTION.** Section 11. Application of the Philanthropy Protection Act.
In compliance with the provisions of section (6)(c) of the Philanthropy Protection Act of
1995, Public Law 104-62, 30-10-201 through 30-10-209 are not preempted."
Renumber: subsequent sections



Jay Wagner hopes that by selling \$3.5 million in bonds, his ministry can do things like expand its food program from the small food pantry operated out of the closet in his apartment.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3-6-97
NO. 287

Bonds for the poor

Group wants to repay \$3.5 million in bonds with TV ministry proceeds

By JIM LUDWICK
of the Missoulian

A small religious group in Missoula is hoping to sell \$3.5 million in bonds to help it develop a homeless shelter, food programs and other services for the poor.

Philippians 4:13 Ministries currently has cable-television programs and a food-pantry operation in Missoula. It has prepared a prospectus that suggests it could provide 12 percent interest to the purchasers of 10-year bonds. Money to pay the bondholders would come from the under-raising of an evangelism program, according to the prospectus.

The bond sale is in limbo while it is examined by the office of the Montana securities commissioner, State Auditor Mark O'Keefe. Bill Lombardi, a spokesman for O'Keefe, said Tuesday that the office has been in contact with Philippians 4:13 Ministries and "they have agreed to make no offers or sales until we

get more information from them."

The ministry was launched in 1992 by Jay Wagner, who had just arrived in Missoula from Dallas, Texas, where he was involved in a "street ministry," he said.

"I first came to Missoula in May '92. I was homeless at the time," he said. "God told me to go to Missoula. If you're spiritually inclined, you learn to know when God is trying to say something and what he's trying to say, when it's a voice in your head."

He now lives at Council Groves Apartments, where he operates a food pantry from a closet, providing about 20 boxes of food per month to the needy. The ministry sponsors summertime meal programs at McCormick Park and special events such as a Labor Day pizza feed. It also offers religious programming that has been aired by the MCAT community-access channel.

It is backed by donations - including money provided by Wagner - and contributions of food from supermarkets

and the Montana Food Bank Network, Wagner said.

With money from the bond sale, the ministry hopes to buy a building in Missoula to house an expanded food pantry, a dining facility, job-placement and casual-labor services, a chapel and dormitories, according to the prospectus.

The TV ministry would be expanded: There would be technical improvements that would help it get approved for airing on Christian networks, reaching a much larger audience of people who ultimately would contribute to the ministry, according to Wagner. That's how the bondholders would be paid, he said.

Who would invest their money in such a plan? "Somebody who is not risk-averse," Wagner said.

"They would be interested because there would be a 12 percent return and they're not afraid of risk. ... Some would have altruistic motives," he said. "We're absolutely sure we could sell it within the state."

728-31
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Mr. Chairman and Members of the Senate Committee
and Industry:

PROPOSED AMENDMENTS TO HB 287
(Second Reading Copy)

1. Page 3, line 7
Strike: "(a)"
2. Page 3, lines 11-13
Strike: subsection (b) in its entirety
3. Page 3, line 14
Strike: "(a)"
4. Page 3, lines 16-18
Strike: subsection (b) in its entirety
5. Page 4, line 21
Following: "means"
Insert: "(i) with respect to an investment adviser registered under this chapter,"
6. Page 4, line 22
Following: "individual"
Insert: ", except clerical or ministerial personnel,"
7. Page 4, line 23
Following: "adviser,"
Strike: "except clerical or ministerial personnel,"
8. Page 4, lines 24 through 27
Strike: "(i)"
Insert: "(A)"
Renumber: subsequent subsections
9. Page 4, line 28
Insert: subsection (ii) as follows:

(ii)(2) With respect to any person that is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940 or that is excluded from the definition of an "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940; "investment adviser representative" shall mean any person who is defined as an "investment adviser representative" under SEC Rule 203a-3 (17 C.F.R. 275.203a-3).
10. Page 10
Following: line 16
Insert: NEW SECTION. Section 30-10-105, MCA, be amended to read:

(1)-(21) No changes.

NEW SECTION. (22)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days provided, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule or order of the commissioner or a document filed with the Securities and Exchange Commission (SEC) that is publicly available through the SEC's Electronic Data Gathering and Retrieval System (EDGAR) and contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen (18) months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered

under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

A. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, or

B. The issuer of the security has been engaged in continuous business (including predecessors) for at least three years, or

C. The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen (18) months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the securities is actually engaged in business and not in the organization state or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal or sinking fund installment on the security when due and payable.

11. Page 13, line 29
Following: "state"
Insert: ", other than those specified in subsection (3)(b)".
12. Page 13, line 30
Following: "Except for"
Insert: "federal covered"
13. Page 13, line 30
Following: "(3)(b)"
Insert: "or (3)(c)",
14. Page 14, lines 7 and 8
Following: "unlawful for"
Strike: remainder of line 7 through "state" in line 8

Insert:

"an investment adviser representative having a place of business located in this state to transact business on behalf of a federal covered adviser"

15. Page 14, lines 22 and 23

Following: "(3)(b)"

Insert: "or (3)(c)"

16. Page 16, line 10

Following: "require"

Insert: "registered"

17. Page 19

Following: Line 8

Insert: NEW SECTION. Section 30-10-206, MCA be amended to read:

(1)-(3) No changes

(4) The commissioner may require that the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which ~~which (a) are issued by a face amount certificate company or a redeemable security issued by an open end management company [CCH FEDERAL SECURITIES LAW REPORTER ¶47,410] or unit investment trust [CCH FEDERAL SECURITIES LAW REPORTER ¶47,397] as these terms are defined in the Investment Company Act of 1940; or (b) are being offered and sold directly by or for the issuer.~~

18. Page 21, lines 14 through 23

Insert: Section 30-10-209(1)(c) and (1)(d) be amended as follows:

(1)(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the person registrant shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(1)(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing registration fee to be calculated as provided in

subsections (1)(a) through (1)(c). The portfolio notice filing registration fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

19. Page 22

Following: Line 12

Insert: NEW SECTION. Section 30-10-301, MCA, be amended as follow:

(1)(a)-(2)(a)(i)-(iii) No changes.

(2)(a)(iv) Subparagraph (iii) shall not apply to federal covered advisers.

(2)(b)-(3) No changes.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any registered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

20. Page 22, line 16

Following: "30-10-201~~(4)~~(6)"

Insert: ", a notice filing under section 10 of this bill,"

21. Page 22, line 17

Following: "registered"

Insert: "or a complete notice filing has been made"

22. Page 22, line 20

Following: "registration"

Insert: "or a notice filing"

23. Page 22, line 21

Following: "security"

Insert: "is"

24. Page 22, line 21

Following: "registered"

Insert: "or a complete notice filing has been made"

25. Page 24

Following: line 2

Insert: NEW SECTION. Section 30-10-305, MCA, be amended to read as follows:

(1)(a) No changes.

(1)(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter, except where a specific remedy is specified in this

chapter or a rule or order thereunder. Upon a proper showing

(2) No changes.

(3) The commission may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practices constituting a violation of any provision of parts 1 through 3 of this chapter, except where a specific remedy is specified in this chapter or a rule or order thereunder. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a)-(c) No changes.

26. Page 24

Following: line 2

Insert: NEW SECTION. Section 30-10-306, MCA, be amended to read as follows:

(1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except the notice filing provisions of 30-10-[notice filing provision] or 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation; however, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2)-(3) No changes.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 7DATE 3-6-97BILL NO. HB 287NAME JAMES C. SOFT, EXECUTIVE VICE PRESIDENTADDRESS P. O. BOX 80807 2050 OVERLAND AVENUEHOME PHONE 406-245-3185 WORK PHONE 406-656-8772REPRESENTING YELLOWSTONE BOYS & GIRLS RANCH FOUNDATIONAPPEARING ON WHICH PROPOSAL? HOUSE BILL 287DO YOU: SUPPORT (see below) OPPOSE (see below) AMEND amendment**COMMENTS:**

As active participants in Montana's charitable sector, our organization supports HB 287 but strongly opposes any attempts to remove Montana charities from the Philanthropy Protection Act of 1995, Public Law 104-62.

The Philanthropy Protection Act was enacted to clarify the application of securities laws to the tools of charitable planned giving vehicles and to discourage harmful lawsuits against charities who offer planned gifts. The regulation issue was thoroughly addressed by Congress resulting in a unanimous vote adopting the Philanthropy Protection Act.

In the charitable sector, what is good for America is good for Montana. Any local legislation (such as the proposed amendment) that could further encumber Montana charities plus open the door for future lawsuits directed at charities will seriously retard the philanthropic development efforts so badly needed in the state of Montana. Montana charities need public encouragement, not counterproductive over regulation.

WITNESS STATEMENT**PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY**

WITNESS.F11

DATE 3-6-97

SENATE COMMITTEE ON Banking and Finance

BILLS BEING HEARD TODAY: HB 266, HH 262
HB 287

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jim Brown	Bldg. Codes Bd. Comm.	266	✓	
Ward Dancha	INVEST CO. INSTITUTE	287	AMEND	
Jim Dunsell	mt Building Trade	266	✓	
Arnie Baxter	MT. Dept of Commerce	262	✓	
Don Hutchinson	" " "	262	✓	
Tom Ellis	Northwest Banks	262	✓	
TOTAL CADDY	MT BANKERS ASSN	262	✓	
Keith L. Colbo	MT Indep. Bankers	262	✓	
Dan STEWART	SELF	266	✓	
Alfredo KIMCK	NECA	266	X	
Ron Van Diest	S. Electrical Board	266	✓	
Lloyd Davison	IBEW # 233	266	✓	
Don CHANCE	MT. BUILDING IND. ASSOC.	266	✓	
Jim Soft	YBGR Fdn	287	✓	

Steve Browning

Montana Community

287 ✓

Beth O'Halloran

VISITOR REGISTER
State Auditor

287 ✓

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 19, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 375; HB 533; 3/5/97
Executive Action: HB 375; HB 533; HB 431;
HB 435; HB 406; HB 78;
HB 399; HB 478; HB 492
HB 287 TABLED

HEARING ON HB 375

Sponsor: REP. WILLIAM RYAN, HD 44, GREAT FALLS

Proponents: Carl Schweitzer, MT Contractors Assoc.
Don Chance, MT Building Industry Assoc.
Kurt Baltrusch, Montana-Dakota Utilities, Billings
Gary Wiens, MT Electric Cooperatives Association
Bud Criner, One Call Service Center

Opponents: None

Vote: THE MOTION TO AMEND HB 399 CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MCCARTHY MOVED HB 399 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY. SEN. BENEDICT WILL CARRY.

HB 267 was discussed and amendments (EXHIBIT 6) were submitted. It was then decided to put the bill on hold till some questions could be cleared up.

{Tape: 1; Side: B; Approx. Time Count: 10:26 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 478

Motion/Vote: SEN. STEVE BENEDICT MOVED HB 478 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY: 6-0 SEN. CRISMORE WILL CARRY.

EXECUTIVE ACTION ON HB 492

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 492 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY: 6-0 SEN. HERTEL WILL CARRY.

EXECUTIVE ACTION ON HB 287

Motion: SEN DEBBIE SHEA MOVED HB 287 BE CONCURRED IN.

Amendments: SEN. SHEA MOVED TO AMEND 287 (EXHIBITS 7 AND 8) hb028701.abc and hb028702.abc.

Discussion: SEN. BENEDICT felt that there had been no compromise between the Department of Commerce and the insurance industry. He then offered a substitute motion.

Substitute Motion/Vote: SEN. BENEDICT MOVED TO TABLE HB 287. THE MOTION CARRIED with SENATORS MCCARTHY AND SHEA voting NO: 4-2

Amendments to House Bill No. 287
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 17, 1997

1. Title, line 12.
Following: "30-10-202,"
Insert: "30-10-206,"
Following: "30-10-209,"
Insert: "30-10-301,"
2. Page 3, line 7.
Strike: "(a)"
3. Page 3, line 8.
Strike: "(i)"
Insert: "(a)"
Re-number: subsequent subsection
4. Page 3, lines 11 through 13.
Strike: subsection (b) in its entirety
5. Page 3, line 14.
Strike: "(a)"
6. Page 3, lines 16 through 18.
Strike: subsection (b) in its entirety
7. Page 4, line 22.
Following: "individual"
Insert: ", except clerical or ministerial personnel,"
8. Page 4, line 23.
Following: "adviser"
Strike: ", except clerical or ministerial personnel,"
9. Page 13, line 29.
Following: "state"
Insert: ", other than those clients specified in subsection
(3) (b) "
10. Page 13, line 30.
Following: "Except for"
Insert: "federal covered"
11. Page 14, line 22.
Following: "(3) (b)"
Insert: "or (3) (c) "
12. Page 16, line 10.
Following: "advisers"

Insert: "who are registered or required to be registered"

13. Page 19, following line 8.

Insert: "

Section 7. Section 30-10-206, "MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such that stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required ~~hereunder~~, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. ~~Every~~ A registration ~~shall~~ must remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b) ~~+, however~~ However, ~~said the~~ registration ~~shall~~ must be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to ~~said the~~ securities and ~~shall~~ must continue to be suspended so long as ~~such the~~ proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the

registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities ~~which: that~~

~~(a) are issued by a face amount certificate company or a redeemable security issued by an open end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or~~

~~(b) are being offered and sold directly by or for the account of the issuer.~~

(5) ~~No~~ A securities registration statement may not be withdrawn, whether or not ~~such~~ the statement has become effective, without the express written consent of the commissioner."

Renumber: subsequent sections

14. Page 21, line 14.

Following: "registrant"

Insert: "or issuer of federal covered securities"

Following: "state,"

Insert: "or for which a notice filing has been submitted,"

15. Page 21, line 15.

Following: "registrant"

Insert: "or issuer"

Following: "statement"

Insert: "or notice filing"

16. Page 21, line 16.

Following: "registrant" at the beginning of line 16

Insert: "or issuer of a federal covered security"

Following: "order"

Insert: "or notice"

Following: "the registrant"

Insert: "or issuer"

17. Page 21, line 18.

Following: "Registration"

Insert: "or notice"

18. Page 21, line 19.

Following: "registration"

Insert: "or notice"

19. Page 21, lines 21 and 22.

Following: "portfolio"

Strike: "registration"

Insert: "notice filing"

20. Page 22, following line 12.

Insert: "

Section 10. Section 30-10-301, "MCA, is amended to read:

"30-10-301. Fraudulent and other prohibited practices. (1)

It is unlawful for any person, in connection with the offer,

sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business ~~which that~~ operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

- (i) to employ any device, scheme, or artifice to defraud the other person;
- (ii) to engage in any act, practice, or course of business ~~which that~~ operates or would operate as a fraud or deceit upon the other person; or
- (iii) without disclosing to the client in writing before the completion of the transaction the capacity in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for ~~his~~ the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than ~~such the~~ client, to knowingly effect the sale or purchase of any security for the account of ~~such the~~ client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to ~~such the~~ transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

- (a) make a false statement of a material fact; or
- (b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser ~~shall~~ may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) ~~no~~ an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment

advisory contract ~~which~~ that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, ~~no~~ an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits ~~such~~ custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that ~~he~~ the investment adviser has or may have ~~such~~ custody."

Renumber: subsequent sections

21. Page 22, line 16.

Following: "(6)"

Insert: ", a notice filing under [section 12],"

22. Page 22, line 17.

Following: "registered"

Insert: "or a complete notice filing has been made"

23. Page 22, line 20.

Following: "registration"

Insert: "or a notice filing"

24. Page 22, line 21.

Following: "security"

Insert: "is"

Following: "registered"

Insert: "or a complete notice filing has been made"

25. Page 23, lines 23 and 25.

Strike: "10"

Insert: "12"

Amendments to House Bill No. 287
Third Reading CopyRequested by Senator Shea
For the Committee on Business and IndustryPrepared by Bart Campbell
March 18, 1997

1. Title, line 6.
Following: "SALESPERSONS;"
Insert: "EXEMPTING CHARITABLE SECURITIES FROM REGISTRATION;"
2. Title, line 11.
Following: "ACT;"
Insert: "EXCLUDING CERTAIN STATE SECURITIES REGISTRATION LAWS
FROM THE PREEMPTIVE EFFECT OF THE PHILANTHROPY PROTECTION
ACT OF 1995;"
3. Page 1, line 22.
Following: "insurance company;"
Strike: "or"
4. Page 1, line 27.
Following: "trustee"
Insert: "; or
(iii) a person effecting a transaction in a security
exempted by 30-10-104(16) "
5. Page 6, line 7.
Strike: "or"
Following: "(11)"
Insert: ", or (16) "
6. Page 10, line 16.
Strike: "."
Insert: "; "
7. Page 10, following line 16.
Insert: "(16) a security described in section (6)(a) of the
Philanthropy Protection Act of 1995, Public Law 104-62."
8. Page 23, following line 21.
Insert: "

NEW SECTION. **Section 11. Exemption.** In compliance with the provisions of section (6)(c) of the Philanthropy Protection Act of 1995, Public Law 104-62, 30-10-201 through 30-10-207 are not preempted."
Renumber: subsequent sections

9. Page 23, line 23.
Following: "~~(1)~~"
Insert: "(1) "

10. Page 23, following line 27.

Insert: "(2) [Section 11] is intended to be codified as an
integral part of Title 30, chapter 10, and the provisions of
Title 30, chapter 10, apply to [section 11]."

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 25, 1997, at 9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: HB 287; HB 388; HB 541; HB 543
HB 267 TABLED

{Tape: 1; Side: A; Approx. Time Count: 9:04 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 267

Motion: SEN. BEA MCCARTHY MOVED HB 267 BE CONCURRED IN.

Discussion: SEN. MCCARTHY said that she had contacted a lawyer, Randy Cox, in Missoula. He replied that overall, the bill with the amendments had a number of problems and would shut the carousel down. The main problem was the carousel in Missoula is a permanent fixture and on page 7, line 3, was a concern. They throw brass rings for free rides and this would be a problem. On page 2, lines 13 and 14, concerning first aid stations, this would create a problem. SENATORS JOHN HERTEL AND CASEY EMERSON expressed concern about the intent of the bill that was based on carnivals coming to fairgrounds. They wondered about the number

EXECUTIVE ACTION ON HB 287

Motion: SEN. STEVE BENEDICT MOVED TO TAKE HB 287 OFF THE TABLE.

Discussion: SEN. BENEDICT explained that the bill was necessary in order to comply with the federal act. Since the amendments were put together by both the Auditor's Office and the insurance industry, he feels that the bill should go forward.

Vote: THE MOTION to take HB 287 off the table CARRIED
UNANIMOUSLY. 6-0

Motion: SEN. BENEDICT MOVED HB 287 BE CONCURRED IN.

Amendments: SEN. BENEDICT MOVED TO AMEND HB 287 (EXHIBIT 6)
hb028701.abc.

Discussion: SEN. BEA MCCARTHY stated that Steve Browning, Montana Community Fund, the large group for the State of Montana, was in agreement with the original bill, but he was not in agreement with the state exempting Montana out of the federal Philanthropic Protection Act. SEN. BENEDICT said that he had not had any thing in writing from anyone in regard to the second set of amendments and suggested that be left for the Senate floor. His suggestion was to pass the bill out as it is with amendments. He called for the vote on the amendments.

Vote on Amendments: THE MOTION TO AMEND HB 287 CARRIED
UNANIMOUSLY: 6-0

Motion/Vote: SEN. BENEDICT MOVED HB 287 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY: 6-0 SEN. SHEA WILL CARRY.

For the Committee on Business and Industry

Prepared by Bart Campbell
March 17, 1997

1. Title, line 12.
Following: "30-10-202,"
Insert: "30-10-206,"
Following: "30-10-209,"
Insert: "30-10-301,"
2. Page 3, line 7.
Strike: "(a)"
3. Page 3, line 8.
Strike: "(i)"
Insert: "(a)"
ReNUMBER: subsequent subsection
4. Page 3, lines 11 through 13.
Strike: subsection (b) in its entirety
5. Page 3, line 14.
Strike: "(a)"
6. Page 3, lines 16 through 18.
Strike: subsection (b) in its entirety
7. Page 4, line 22.
Following: "individual"
Insert: ", except clerical or ministerial personnel,"
8. Page 4, line 23.
Following: "adviser"
Strike: ", except clerical or ministerial personnel,"
9. Page 13, line 29.
Following: "state"
Insert: ", other than those clients specified in subsection
(3)(b) "
10. Page 13, line 30.
Following: "Except for"
Insert: "federal covered"
11. Page 14, line 22.
Following: "(3)(b)"
Insert: "or (3)(c) "
12. Page 16, line 10.
Following: "advisers"

Insert: "who are registered or required to be registered"

13. Page 19, following line 8.

Insert: "

Section 7. Section 30-10-206, "MCA, is amended to read:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such that stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required ~~hereunder~~, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. ~~Every~~ A registration ~~shall~~ must remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b) ~~+, however~~ However, ~~said the~~ registration ~~shall~~ must be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to ~~said the~~ securities and ~~shall~~ must continue to be suspended so long as ~~such the~~ proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the

registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities ~~which: that~~

~~(a) are issued by a face amount certificate company or a redeemable security issued by an open end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or~~

~~(b) are being offered and sold directly by or for the account of the issuer.~~

(5) No A securities registration statement may not be withdrawn, whether or not ~~such~~ the statement has become effective, without the express written consent of the commissioner."

Renumber: subsequent sections

14. Page 21, line 14.

Following: "registrant"

Insert: "or issuer of federal covered securities"

Following: "state,"

Insert: "or for which a notice filing has been submitted,"

15. Page 21, line 15.

Following: "registrant"

Insert: "or issuer"

Following: "statement"

Insert: "or notice filing"

16. Page 21, line 16.

Following: "registrant" at the beginning of line 16

Insert: "or issuer of a federal covered security"

Following: "order"

Insert: "or notice"

Following: "the registrant"

Insert: "or issuer"

17. Page 21, line 18.

Following: "Registration"

Insert: "or notice"

18. Page 21, line 19.

Following: "registration"

Insert: "or notice"

19. Page 21, lines 21 and 22.

Following: "portfolio"

Strike: "registration"

Insert: "notice filing"

20. Page 22, following line 12.

Insert: "

Section 10. Section 30-10-301, "MCA, is amended to read:
"30-10-301. **Fraudulent and other prohibited practices.** (1)
It is unlawful for any person, in connection with the offer,

sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business ~~which that~~ operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

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- (ii) to engage in any act, practice, or course of business ~~which that~~ operates or would operate as a fraud or deceit upon the other person; or
- (iii) without disclosing to the client in writing before the completion of the transaction the capacity in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for ~~his~~ the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than ~~such~~ the client, to knowingly effect the sale or purchase of any security for the account of ~~such~~ the client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to ~~such~~ the transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

- (a) make a false statement of a material fact; or
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(a) the investment adviser ~~shall~~ may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

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(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment

advisory contract ~~which~~ that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, ~~no~~ an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

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Insert: ", a notice filing under [section 12],"

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Following: "registered"

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Following: "security"

Insert: "is"

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Insert: "or a complete notice filing has been made"

25. Page 23, lines 23 and 25.

Strike: "10"

Insert: "12"

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SENATE STANDING COMMITTEE REPORT

Page 1 of 6
March 25, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill 287 (third reading copy -- blue), respectfully report that House Bill 287 be amended as follows and as so amended be concurred in.

Signed: John R. Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 12.
Following: "30-10-202,"
Insert: "30-10-206,"
Following: "30-10-209,"
Insert: "30-10-301,"
2. Page 3, line 7.
Strike: "(a)"
3. Page 3, line 8.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsection
4. Page 3, lines 11 through 13.
Strike: subsection (b) in its entirety
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Strike: subsection (b) in its entirety
7. Page 4, line 22.
Following: "individual"
Insert: ", except clerical or ministerial personnel,"
8. Page 4, line 23.
Following: "adviser"
Strike: ", except clerical or ministerial personnel,"

 Amd. Coord.
Sec. of Senate

JEN. SHEA
Senator Carrying Bill

651706SC.SRF

9. Page 13, line 29.

Following: "state"

Insert: ", other than those clients specified in subsection
(3) (b) "

10. Page 13, line 30.

Following: "Except for"

Insert: "federal covered"

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(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such that stage, then this condition does not apply; and

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~~(a) are issued by a face amount certificate company or a redeemable security issued by an open end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or~~

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 (c) engage in any act, practice, or course of business ~~which~~ that operates or would operate as a fraud or deceit upon any person.
 (2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:
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(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

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Insert: "is"

Following: "registered"

Insert: "or a complete notice filing has been made"

25. Page 23, lines 23 and 25.

Strike: "10"

Insert: "12"

-END-

APPROVED BY COM
BUSINESS & INDU

HOUSE BILL NO. 287

INTRODUCED BY WISEMAN, R. JOHNSON, EWER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING THE ACTIVITIES OF FEDERAL COVERED ADVISERS; ~~EXEMPTING MONTANA FROM THE PROVISIONS OF THE PHILANTHROPY PROTECTION ACT;~~ AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107, 30-10-110, 30-10-201, 30-10-202, 30-10-206, 30-10-207, 30-10-209, 30-10-301, AND 30-10-303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or
(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

1 (i) any agricultural, grain, or livestock product or byproduct;

2 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether
3 characterized as precious, semiprecious, or otherwise;

4 (iii) any fuel, whether liquid, gaseous, or otherwise;

5 (iv) foreign currency; and

6 (v) all other goods, articles, products, or items of any kind.

7 (b) Commodity does not include:

8 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it
9 contains;

10 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
11 and offered and sold by the owner or lessee of the real property; or

12 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a
13 private sale by the owner.

14 (4) "Commodity Exchange Act" means the federal statute of that name as amended on the
15 effective date of this subsection.

16 (5) "Commodity futures trading commission" means the independent regulatory agency established
17 by congress to administer the Commodity Exchange Act.

18 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
19 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
20 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
21 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
22 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage
23 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
24 the contrary, is presumed to be offered or sold for speculation or investment purposes.

25 (b) A commodity investment contract does not include a contract or agreement that requires, and
26 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
27 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
28 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
29 total amount of each commodity to be purchased under the contract or agreement when the commodity
30 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien

arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) ~~(a)~~ "Federal covered adviser" means a person who is:

~~(i)(A)~~ registered under section 203 of the Investment Advisers Act of 1940; or

~~(i)(B)~~ excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

~~(b) A person acting as a federal investment adviser who has not promptly remedied the nonpayment or underpayment of the fee required in 30-10-209 after receiving written notification of the nonpayment or underpayment from the commissioner is not a federal covered adviser.~~

(9) ~~(a)~~ "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

~~(b) A security for which a fee required by Title 30, chapter 10, parts 1 through 3, has not been paid or has been underpaid and the nonpayment or underpayment has not been promptly remedied after written notification from the commissioner has been received is not a federal covered security.~~

~~(10)~~ "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

~~(11)~~ (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection ~~(9)(a)~~ (11)(a) to others for compensation.

(c) Investment adviser does not include:

- (i) an investment adviser representative;
- (ii) a bank, savings institution, trust company, or insurance company;
- (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;
- (iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;
- (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise; that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
- (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);
- (vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ (11)(a) is solely incidental to the practice of the person's profession; ~~or~~
- (viii) a federal covered adviser; or
- ~~(viii)~~ (ix) other persons not within the intent of this subsection ~~(9)~~ (11) as the commissioner may by rule or order designate.
- ~~(10)~~ (12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, EXCEPT CLERICAL OR MINISTERIAL PERSONNEL, employed by or associated with an investment adviser, ~~except clerical or ministerial personnel~~, who:
- (i) makes any recommendation or otherwise renders advice regarding securities to clients;
- (ii) manages accounts or portfolios of clients;
- (iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or
- (iv) supervises employees who perform any of the foregoing.
- (b) Investment adviser representative does not include a salesperson registered pursuant to

30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser.

~~(11)~~(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

~~(12)~~(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

~~(13)~~(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(14)~~(16) "Precious metal" means the following, in coin, bullion, or other form:

- (a) silver;
- (b) gold;
- (c) platinum;
- (d) palladium;
- (e) copper; and
- (f) other items as the commissioner may by rule or order specify.

~~(15)~~(17) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

~~(16)~~(18) (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or

1 offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as
2 well as each sale or offer of a security that gives the holder a present or future right or privilege to convert
3 into another security of the same or another issuer, is considered to include an offer of the other security.

4 ~~(17)~~(19) "Salesperson" means an individual other than a broker-dealer who represents a
5 broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director
6 of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.
7 Salesperson does not include an individual who represents:

8 (a) an issuer in:

9 ~~(a)(i)~~ effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

10 ~~(b)(ii)~~ effecting transactions exempted by 30-10-105, except when registration as a salesperson,
11 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

12 (iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
13 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933;

14 or

15 ~~(c)(iv)~~ effecting transactions with existing employees, partners, or directors of the issuer if no
16 commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

17 or

18 (b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
19 of the Securities Exchange Act of 1934.

20 ~~(18)~~(20) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding
21 Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940"
22 mean the federal statutes of those names ~~as amended before or after July 1, 1961.~~

23 ~~(19)~~(21) (a) "Security" means any note; stock; treasury stock; bond; commodity investment
24 contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in
25 any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription;
26 transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security;
27 certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production
28 under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call,
29 straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including
30 any interest in a security or based on the value of a security, or any certificate of interest or participation

1 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
2 purchase any of the foregoing.

3 (b) Security does not include an insurance or endowment policy or annuity contract under which
4 an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life
5 or some other specified period.

6 ~~(20)~~(22) "State" means any state, territory, or possession of the United States, as well as the
7 District of Columbia and Puerto Rico.

8 ~~(24)~~(23) "Transact", "transact business", or "transaction" includes the meanings of the terms
9 "sale", "sell", and "offer".

11 **Section 2.** Section 30-10-104, MCA, is amended to read:

12 **"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of
13 the following securities:

14 (1) any security, ~~including a revenue obligation~~, issued or guaranteed by the United States, any
15 state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more
16 of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of
17 the foregoing that is payable solely from payments to be received in respect of property or money used
18 under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise,
19 unless ~~such~~ the enterprise or any security of which it is the issuer is within any of the exemptions
20 enumerated in subsections (2) through ~~(14)~~ (15) of this section;

21 (2) any security issued or guaranteed by Canada, ~~any a~~ a Canadian province, ~~any a~~ a political
22 subdivision of ~~any such a~~ a province, or ~~any an~~ a agency or corporate or other instrumentality of one or more
23 of the foregoing or any other foreign government with which the United States currently maintains
24 diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

25 (3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any a~~ a bank
26 organized under the laws of the United States or ~~any a~~ a bank, savings institution, or trust company
27 organized and supervised under the laws of any state;

28 (4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any a~~ a
29 federal savings and loan association or ~~any a~~ a building and loan or similar association organized under the
30 laws of any state and authorized to do business in this state;

1 (5) any security issued or guaranteed by ~~any~~ a federal credit union or ~~any~~ a credit union, industrial
2 loan association, or similar association organized and supervised under the laws of this state;

3 (6) any security issued or guaranteed by ~~any~~ a railroad, other common carrier, public utility, or
4 holding company which is:

5 (a) subject to the jurisdiction of the interstate commerce commission;

6 (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a
7 subsidiary of ~~such~~ a registered holding company within the meaning of that act;

8 (c) regulated in respect of its rates and charges by a governmental authority of the United States
9 or any state or municipality; or

10 (d) regulated in respect to the issuance or guarantee of the security by a governmental authority
11 of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in
12 respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by
13 ~~such~~ the railroad or public utility would be exempt under this subsection;

14 (7) any security that meets all of the following conditions:

15 (a) if the issuer is not organized under the laws of the United States or a state, it has appointed
16 a duly authorized agent in the United States for service of process and has set forth the name and address
17 of ~~such~~ the agent in its prospectus;

18 (b) a class of the issuer's securities is required to be and is registered under section 12 of the
19 Securities Exchange Act of 1934 and has been ~~so~~ registered for the 3 years immediately preceding the
20 offering date;

21 (c) ~~neither~~ the issuer ~~nor~~ or a significant subsidiary has not had a material default during the last
22 7 years, ~~for~~ during the issuer's existence if that period is less than 7 years, in the payment of:

23 (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for
24 borrowed money; or

25 (ii) rentals under leases with terms of 3 years or more;

26 (d) the issuer has had consolidated net income, ~~before~~ before extraordinary items and the cumulative
27 effect of accounting changes, of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal
28 year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but
29 before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest
30 expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year",

1 as used in this subsection (7)(d), means the most recent year for which audited financial statements are
2 available, provided that ~~such the~~ statements cover a fiscal period ended not more than 15 months from the
3 commencement of the offering.

4 (e) if the offering is of stock or shares, other than preferred stock or shares, ~~such the~~ securities
5 have voting rights and ~~such rights include~~ including the right to have at least as many votes per share and
6 the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes
7 of stock or shares, except as otherwise required by law;

8 (f) if the offering is of stock or shares, other than preferred stock or shares, ~~such the~~ securities are
9 owned beneficially or of record on any date within 6 months prior to the commencement of the offering
10 by at least 1,200 persons and on ~~such that~~ date there are at least 750,000 ~~such of the~~ shares outstanding
11 with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In
12 connection with the determination of the number of persons who are beneficial owners of the stock or
13 shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon
14 written information furnished by the record owners.

15 (8) any security issued by any person organized and operated not for private profit but exclusively
16 for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the
17 issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice
18 specifying the terms of the offer and the commissioner does not disallow the exemption in writing within
19 ~~such the~~ 20-day period;

20 (9) any commercial paper ~~which that~~ arises out of a current transaction or the proceeds of which
21 have been or are to be used for the current transaction and ~~which that~~ evidences an obligation to pay cash
22 within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such the~~ paper
23 which is likewise limited or any guarantee of ~~such the~~ paper or of any ~~such~~ renewal, when ~~such the~~
24 commercial paper is sold to banks or insurance companies;

25 (10) any investment contract issued in connection with an employee's stock purchase, savings,
26 pension, profit-sharing, or similar benefit plan;

27 (11) any security for which the commissioner determines by order that an exemption would better
28 serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed
29 in 30-10-209(4).

30 (12) any security listed or approved for listing upon notice of issuance on the New York stock

1 exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the
2 Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange or any
3 other stock exchange registered with the federal securities and exchange commission and approved by the
4 commissioner; any other security of the same issuer that is of senior or substantially equal rank; any
5 security called for by subscription rights or warrants so listed or approved; or any warrant or right to
6 purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or
7 otherwise condition the terms under which any security may be exempt under this subsection.

8 (13) any national market system security listed or approved for listing upon notice of issuance on
9 the national association of securities dealers automated quotation system or any other national quotation
10 system approved by the commissioner; any other security of the same issuer that is of senior or
11 substantially equal rank; any security called for by subscription rights or warrants so listed or approved;
12 or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The
13 commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security
14 may be exempt under this subsection.

15 (14) any security issued by and representing an interest in, or a debt of, or any security guaranteed
16 by any insurer organized and authorized to transact business under the laws of any state;

17 (15) any security for which an offer or sale is not directed to or received by a person in this state,
18 and the issuer does not maintain a place of business in the state."

19
20 **Section 3.** Section 30-10-107, MCA, is amended to read:

21 **"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this
22 chapter ~~shall~~ must be under the general supervision and control of the state auditor, the ex officio securities
23 commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms
24 as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ A rule or form may
25 not be made adopted unless the commissioner finds that the action is necessary or appropriate in the public
26 interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ of the policy
27 and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may
28 cooperate with the securities administrators of the other states and the securities and exchange commission
29 with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity
30 in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of ~~his~~ the commissioner's officers or employees to use for personal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~ not made public. ~~No provision~~ The provisions of parts 1 through 3 of this chapter ~~authorizes~~ do not authorize the commissioner or any of ~~his~~ the commissioner's officers or employees to disclose any ~~such~~ information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) ~~No provision~~ The provisions of parts 1 through 3 of this chapter imposing any liability ~~applies~~ do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding ~~shall~~ must be public unless the commissioner ~~in his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements ~~which~~ that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ that have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under ~~such~~ rules as the commissioner prescribes.

(6) Upon request and at ~~such a reasonable charges as he prescribes~~ charge, the commissioner shall furnish to any person photostatic or other copies, ~~(certified under his seal of office if requested,)~~ of any entry in the register or any document ~~which~~ that is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any certified copy ~~so certified~~ is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last recorded principal place of

1 business on file at the commissioner's office. An order or notice that is mailed is considered to have been
2 given at the time it is mailed."

3
4 **Section 4.** Section 30-10-110, MCA, is amended to read:

5 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
6 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
7 to buy is made and accepted in this state.

8 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to
9 buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

10 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
11 either party is then present in this state, when the offer either originates from this state or is directed by
12 the offeror to this state and received at the place to which it is directed or at any post office in this state
13 in the case of a mailed offer, ~~but for the purpose of 30-10-202, an offer to sell which is not directed to or~~
14 ~~received by the offeree in this state is not made in this state.~~

15 (4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance
16 is communicated to the offeror in this state and acceptance has not previously been communicated to the
17 offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state,
18 whether or not either party is then present in this state, when the offeree directs it to the offeror in this
19 state, reasonably believing the offeror to be in this state, and it is received at the place to which it is
20 directed or at any post office in this state in the case of a mailed acceptance.

21 (5) An offer to sell or to buy is not made in this state when:

22 (a) the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona
23 fide newspaper or other publication of general, regular, and paid circulation ~~which~~ that is:

24 (i) not published in this state; or

25 (ii) published in this state but has had more than two-thirds of its circulation outside this state
26 during the past 12 months; or

27 (b) a radio or television program originating outside this state is received in this state.

28 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers
29 and investment adviser representatives are concerned, apply when any act instrumental in effecting
30 prohibited conduct is done in this state, whether or not either party is then present in this state."

1 **Section 5.** Section 30-10-201, MCA, is amended to read:

2 **"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons,**

3 **investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact
4 business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person
5 is registered under parts 1 through 3 of this chapter.

6 (2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer
7 or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered
8 under parts 1 through 3 of this chapter.

9 (3) It is unlawful for any person to transact business in this state as an investment adviser or as
10 an investment adviser representative unless:

11 (a) the person is ~~se~~ registered under parts 1 through 3 of this chapter;

12 ~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

13 ~~(c)(b)~~ the person does not have a place of business in the state and the person's only clients in this
14 state are:

15 (i) investment companies, as defined in the Investment Company Act of 1940, or insurance
16 companies;

17 (ii) other investment advisers;

18 (iii) federal covered advisers;

19 ~~(iii)(iv)~~ (iv) broker-dealers;

20 ~~(iv)(v)~~ (v) banks;

21 ~~(v)(vi)~~ (vi) trust companies;

22 ~~(vi)(vii)~~ (vii) savings and loan associations;

23 ~~(vii)(viii)~~ (viii) employee benefit plans with assets of not less than \$1 million;

24 ~~(viii)(ix)~~ (ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees
25 with investment control; or

26 ~~(ix)(x)~~ (x) other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

27 ~~(d)(c)~~ (c) the person does not have a place of business in this state and during ~~any 12 consecutive~~
28 ~~months does not direct business communications in this state in any manner to more than five present or~~
29 ~~prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the~~
30 ~~persons to whom the communications are directed are then present in this state~~ the preceding 12-month

1 period the person has not had more than five clients who are residents of this state, OTHER THAN THOSE
2 CLIENTS SPECIFIED IN SUBSECTION (3)(B).

3 (4) Except for FEDERAL COVERED advisers whose only clients are clients listed in subsection
4 (3)(b), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the
5 federal covered adviser complies with the provisions of subsection (6)(b).

6 (5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30,
7 chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment
8 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
9 3.

10 (b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an
11 investment adviser representative who maintains a place of business in this state unless the investment
12 adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through
13 3.

14 ~~(4)(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a~~
15 ~~broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser~~
16 ~~representative may apply for registration by filing an application in the form that the commissioner~~
17 ~~prescribes and payment of the fee prescribed in 30-10-209. A salesperson acting as agent for an issuer or~~
18 ~~broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed~~
19 ~~by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the~~
20 ~~commissioner, be required to file with the commissioner a bond of a surety company duly authorized to~~
21 ~~transact business in this state. The bond must be in an amount determined by the commissioner, payable~~
22 ~~to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through~~
23 ~~3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons~~
24 ~~who may suffer loss by reason of a failure to comply.~~

25 (b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) OR
26 (3)(C), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee
27 prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the
28 securities and exchange commission that the commissioner requires by rule or order.

29 ~~(5)(7)~~ The application must contain whatever information the commissioner requires. A registration
30 application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may

1 not be withdrawn before the commissioner approves or denies the registration, without the express written
2 consent of the commissioner.

3 ~~(6)~~(8) When the registration requirements are met, the commissioner shall make the registration
4 effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment
5 adviser representative may not be withdrawn or terminated without the express written consent of the
6 commissioner.

7 ~~(7)~~(9) ~~Except as provided in subsection (6), registration~~ Registration of a broker-dealer, salesperson,
8 investment adviser, or investment adviser representative:

9 (a) is effective until December 31 following the registration or any other time as the commissioner
10 may by rule adopt; and

11 (b) may be renewed pursuant to subsection (11).

12 ~~(8)~~(10) (a) The registration of a salesperson is not effective during any period when the salesperson
13 is not associated with an issuer or a registered broker-dealer specified in the application. When a
14 salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson
15 and the issuer or broker-dealer shall promptly notify the commissioner.

16 ~~(9)~~(b) The registration of an investment adviser representative is not effective during any period
17 when the person is not associated with an investment adviser registered under this act and specified in the
18 application. When an investment adviser representative begins or terminates a connection with an
19 investment adviser, the investment adviser shall promptly notify the commissioner. When an investment
20 adviser representative begins or terminates a connection with a federal covered adviser, the investment
21 adviser representative shall promptly notify the commissioner.

22 ~~(10)~~(11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser
23 representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration
24 of the registration or notice filing, an application containing information as the commissioner may require
25 to indicate any material change in the information contained in the original application or any renewal
26 application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser~~
27 ~~representative filed by the applicant~~ or notice filing, and payment of the prescribed fee prescribed by
28 30-10-209, and, in the case of a A broker-dealer who is not a member of NASD, inc., by filing is required
29 to file a financial statement showing the financial condition of the broker-dealer as of a date within 90 days
30 of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange

1 Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a
2 successor, to become effective upon approval of the commissioner.

3 ~~(11)~~(12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case
4 of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment
5 adviser, every ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and
6 other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the
7 commissioner by rule or order. All required records of an investment adviser must be preserved for ~~3 years~~
8 ~~unless the period~~ the commissioner prescribes ~~otherwise for particular types of records~~ by rule or order.
9 All the records of a registered broker-dealer or investment adviser are subject at any time or from time to
10 time to reasonable periodic, special, or other examinations, within or outside this state, by representatives
11 of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for
12 the protection of investors.

13 (b) The commissioner may require investment advisers WHO ARE REGISTERED OR REQUIRED TO
14 BE REGISTERED to furnish or disseminate certain information as necessary or appropriate in the public
15 interest or for the protection of investors and advisory clients.

16 (c) If information contained in any document filed with the commissioner is, or becomes, inaccurate
17 or incomplete in any material respect, the registrant or federal covered adviser must promptly file a
18 correcting amendment.

19 ~~(12)~~(13) The commissioner may by order deny, suspend, or revoke registration of any
20 broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner
21 finds that the order is in the public interest and that the applicant or registrant or, in the case of a
22 broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or
23 performing similar functions, or person directly or indirectly controlling the broker-dealer or investment
24 adviser:

25 (a) has filed an application for registration under this section that, as of its effective date or as of
26 any date after filing in the case of an order denying effectiveness, was incomplete in any material respect
27 or contained any statement that was, in the light of the circumstances under which it was made, false or
28 misleading with respect to any material fact;

29 (b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this
30 chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor

1 law;

2 (c) has been convicted of any misdemeanor involving a security or any aspect of the securities
3 business or any felony;

4 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging
5 in or continuing any conduct or practice involving any aspect of the securities business;

6 (e) is the subject of an order of the commissioner denying, suspending, or revoking registration as
7 a broker-dealer, salesperson, investment adviser, or investment adviser representative;

8 (f) is the subject of an adjudication or determination, within the past 5 years, by a securities or
9 commodities agency or administrator of another state or a court of competent jurisdiction, that the person
10 has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act
11 of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or
12 commodities law of any other state;

13 (g) has engaged in dishonest or unethical practices in the securities business;

14 (h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the
15 sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order
16 against a broker-dealer or investment adviser under this subsection ~~(12)~~(13) without a finding of insolvency
17 as to the broker-dealer or investment adviser;

18 (i) has not complied with a condition imposed by the commissioner under this section or is not
19 qualified on the basis of such factors as training, experience, or knowledge of the securities business;

20 (j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under
21 this subsection ~~(12)~~(13), and the commissioner shall vacate any order when the deficiency has been
22 corrected; or

23 (k) has failed to reasonably supervise the person's salespersons or employees or investment adviser
24 representatives or employees to assure their compliance with this act.

25 ~~(13)~~(14) The commissioner may not institute a suspension or revocation proceeding on the basis
26 of a fact or transaction known to the commissioner when registration became effective unless the
27 proceeding is instituted within 30 days after the date on which the registration became effective.

28 ~~(14)~~(15) The commissioner may by order summarily postpone or suspend registration pending final
29 determination of any proceeding under this section.

30 ~~(15)~~(16) Upon the entry of the order under subsection ~~(12)~~ (13) of this section, the commissioner

1 shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the
2 applicant or registrant is a salesperson or investment adviser representative, that it has been entered and
3 of the reasons for the order and that if requested by the applicant or registrant within 15 days after the
4 receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not
5 requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it
6 is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after
7 notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

8 ~~(16)~~(17) If the commissioner finds that any registrant or applicant for registration is no longer in
9 existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment
10 adviser representative or is subject to an adjudication of mental incompetence or to the control of a
11 committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may
12 by order cancel the registration or application.

13 ~~(17)~~(18) The commissioner may, after suspending or revoking registration of any broker-dealer,
14 salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed \$5,000
15 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is
16 in addition to all other penalties imposed by the laws of this state and must be collected by the
17 commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine
18 under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any
19 broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine
20 referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the
21 broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may
22 be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer,
23 salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a
24 forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

25 ~~(18)~~(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ
26 other salespersons or investment adviser representatives, other than the sole proprietor, is not required to
27 register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser
28 representative if the sole proprietor meets the examination requirements established by the commissioner
29 by rule.

30 ~~(19)~~(20) A person who is subject to the provisions of this section and who has passed the general

securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed the examination unless the commissioner can verify electronically that the person has passed the exam."

Section 6. Section 30-10-202, MCA, is amended to read:

"30-10-202. Registration of securities. It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless:

(1) ~~such~~ the security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter; or

(2) for a federal covered security, the security has been filed with the commissioner pursuant to [section 10] and the fee prescribed in 30-10-209 has been paid."

SECTION 7. SECTION 30-10-206, MCA, IS AMENDED TO READ:

"30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in ~~such~~ that stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required

1 hereunder, but he may not reject a depository solely because of location in another state.

2 (3) When securities are registered by notification, coordination, or qualification, they may be
3 offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered
4 broker-dealer. ~~Every~~ A registration ~~shall~~ must remain effective for a period of 1 year unless it is revoked by
5 the commissioner, terminated upon request of the registrant with the consent of the commissioner, or
6 renewed under 30-10-209(1)(b); ~~however~~ However, ~~said the~~ registration ~~shall~~ must be automatically
7 suspended upon a stop order or suspension proceedings being instituted by the securities and exchange
8 commission relative to ~~said the~~ securities and ~~shall~~ must continue to be suspended so long as ~~such the~~
9 proceedings are pending and until the registration or filing with the securities and exchange commission
10 is effective. All outstanding securities of the same class as a currently registered security are considered
11 to be registered for the purpose of any nonissuer transaction. A registration statement which has become
12 effective may not be withdrawn for 1 year from its effective date if any securities of the same class are
13 outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells
14 registered securities must be registered pursuant to 30-10-201.

15 (4) The commissioner may require the person who filed the registration statement to file reports
16 to keep reasonably current the information contained in the registration statement and to disclose the
17 progress of the offering with respect to registered securities ~~which; that~~

18 ~~(a) are issued by a face amount certificate company or a redeemable security issued by an~~
19 ~~open end management company or unit investment trust as those terms are defined in the Investment~~
20 ~~Company Act of 1940; or~~

21 ~~(b)~~ are being offered and sold directly by or for the account of the issuer.

22 (5) ~~No~~ A securities registration statement may not be withdrawn, whether or not ~~such the~~
23 statement has become effective, without the express written consent of the commissioner."
24

25 **Section 8.** Section 30-10-207, MCA, is amended to read:

26 **"30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner
27 may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any
28 registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

29 (a) the registration statement, as of its effective date or as of any earlier date in the case of an
30 order denying effectiveness, is incomplete in any material respect or contains any statement ~~which that~~

1 was, in the light of the circumstances under which it was made, false or misleading with respect to any
2 material fact;

3 (b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully
4 imposed under parts 1 through 3 of this chapter has been willfully violated, ~~in connection with the offering,~~
5 by:

6 (i) the person filing the registration statement;

7 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status
8 or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer,
9 but only if the person filing the registration statement is directly or indirectly controlled by or acting for the
10 issuer; or

11 (iii) any underwriter;

12 (c) the security registered or sought to be registered is the subject of a permanent or temporary
13 injunction of any court of competent jurisdiction entered under any other federal or state law applicable to
14 the offering, but:

15 (i) the commissioner may not institute a proceeding against an effective registration statement
16 under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

17 (ii) ~~he~~ may not enter an order under this subsection (1)(c) on the basis of an injunction entered
18 under any other state law unless that order or injunction was based on facts ~~which~~ that would currently
19 constitute a ground for an order under this section;

20 (d) the issuer's enterprise or method of business includes or would include activities ~~which~~ that
21 are illegal where performed;

22 (e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

23 (f) when a security is sought to be registered by notification, it is not eligible for ~~such~~ registration
24 by notification;

25 (g) when a security is sought to be registered by coordination, there has been a failure to comply
26 with the undertaking required by 30-10-204(1)(g);

27 (h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner
28 may enter only a denial order under this subsection, and ~~he~~ shall vacate any ~~such~~ denial order when the
29 deficiency has been corrected; or

30 (i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers'

1 discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable
2 amounts or kinds of options.

3 (2) The commissioner may not enter a suspension or revocation order against an effective
4 registration statement on the basis of a fact or transaction known to ~~him~~ the commissioner when the
5 registration statement became effective.

6 (3) Upon the entry of an order under subsection ~~(1) of this section~~, the commissioner shall promptly
7 notify the issuer of the securities and the applicant or registrant that an order has been entered and of the
8 reasons ~~therefor~~ for the order and that, if requested by the issuer or registrant within 15 days after the
9 receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ a hearing
10 is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect
11 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,
12 after notice of and opportunity for hearing, may affirm, modify, or vacate the order."
13

14 **Section 9.** Section 30-10-209, MCA, is amended to read:

15 **"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1
16 through 3 of this chapter:

17 (1) (a) For the registration of securities by notification, coordination, or qualification, or for notice
18 filing of a federal covered security, there must be paid to the commissioner for the ~~first~~ initial year of
19 registration or notice filing a ~~registration~~ fee of \$200 for the first \$100,000 of initial issue or portion ~~thereof~~
20 of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000,
21 with a maximum fee of \$1,000.

22 (b) Each succeeding year, a registration of securities or a notice filing of a federal covered security
23 may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and
24 payment of ~~an additional registration~~ a renewal fee to be computed at 1/10 of 1% of the aggregate offering
25 price of the securities that are to be offered in this state during that year, ~~even though the maximum fee~~
26 ~~was paid the preceding year.~~ The ~~additional registration~~ renewal fee may not be less than \$200 or more
27 than \$1,000. The registration ~~statement for the securities~~ or the notice filing may be amended to increase
28 the amount of securities to be offered.

29 (c) If a registrant OR ISSUER OF FEDERAL COVERED SECURITIES sells securities in excess of the
30 aggregate amount registered for sale in this state, OR FOR WHICH A NOTICE FILING HAS BEEN

1 SUBMITTED, the registrant OR ISSUER may file an amendment to the registration statement OR NOTICE
2 FILING to include the excess sales. If the registrant OR ISSUER OF A FEDERAL COVERED SECURITY fails
3 to file an amendment before the expiration date of the registration order OR NOTICE, the registrant OR
4 ISSUER shall pay a filing fee for the excess sales of three times the amount calculated in the manner
5 specified in subsection (1)(b). Registration OR NOTICE of the excess securities is effective retroactively to
6 the date of the existing registration OR NOTICE.

7 (d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated
8 as a separate issuer of securities. The issuer shall pay a portfolio ~~registration~~ NOTICE FILING fee to be
9 calculated as provided in subsections (1)(a) through (1)(c). The portfolio ~~registration~~ NOTICE FILING fee
10 collected by the commissioner must be deposited in the state special revenue account provided for in
11 30-10-115.

12 (2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original
13 registration and \$200 for each annual renewal.

14 (b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original
15 registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson
16 who is dually registered as an investment adviser representative with a broker-dealer dually registered as
17 an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

18 (c) For a federal covered adviser the fee is \$200 for the initial notice filing and \$200 for each
19 annual renewal.

20 (3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the
21 cost to the department.

22 (4) For a request for an exemption under 30-10-105(15), the fee must be established by the
23 commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1
24 through 3 of this chapter, the fee is \$50.

25 (5) All fees are considered fully earned when received. In the event of overpayment, only those
26 amounts in excess of \$10 may be refunded.

27 (6) Except for portfolio registration fees established in this section, all fees, examination charges,
28 miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3
29 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the
30 general fund."

1 **SECTION 10. SECTION 30-10-301, MCA, IS AMENDED TO READ:**

2 **"30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in
3 connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state,
4 to:

5 (a) employ any device, scheme, or artifice to defraud;

6 (b) make any untrue statement of a material fact or omit to state a material fact necessary in order
7 to make the statements made, in the light of the circumstances under which they are made, not misleading;
8 or

9 (c) engage in any act, practice, or course of business ~~which~~ that operates or would operate as a
10 fraud or deceit upon any person.

11 (2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from
12 another person for advising the other person as to the value of securities or their purchase or sale, whether
13 through the issuance of analysis or reports or otherwise:

14 (i) to employ any device, scheme, or artifice to defraud the other person;

15 (ii) to engage in any act, practice, or course of business ~~which~~ that operates or would operate as
16 a fraud or deceit upon the other person; or

17 (iii) without disclosing to the client in writing before the completion of the transaction the capacity
18 in which ~~he~~ the person is acting and obtaining the consent of the client to the transaction:

19 (A) acting as principal for ~~his~~ the person's own account, to knowingly sell any security to or
20 purchase any security from a client; or

21 (B) acting as agent for a person other than ~~such~~ the client, to knowingly effect the sale or purchase
22 of any security for the account of ~~such~~ the client.

23 (b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a
24 broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to
25 ~~such~~ the transaction.

26 (3) In the solicitation of advisory clients, it is unlawful for a person to:

27 (a) make a false statement of a material fact; or

28 (b) omit a material fact necessary to make a statement not misleading in light of the circumstances
29 under which it is made.

30 (4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment

1 adviser who is registered or required to be registered to enter into, extend, or renew any investment
2 advisory contract unless it provides in writing that:

3 (a) the investment adviser ~~shall~~ may not be compensated on the basis of a share of capital gains
4 upon or capital appreciation of the funds or any portion of the funds of the client;

5 (b) ~~an~~ an assignment of the contract may not be made by the investment adviser without the
6 consent of the other party to the contract; and

7 (c) the investment adviser, if a partnership, shall notify the other party to the contract of any
8 change in the membership of the partnership within a reasonable time after the change.

9 (5) Subsection (4)(a) does not prohibit an investment advisory contract ~~which~~ that provides for
10 compensation based upon the total value of a fund averaged over a definite period or as of definite dates
11 or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect
12 transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of
13 the assignor's outstanding voting securities by a security holder of the assignor; but if the investment
14 adviser is a partnership, ~~an~~ an assignment of an investment advisory contract is not considered to result
15 from the death or withdrawal of a minority of the members of the investment adviser having only a minority
16 interest in the business of the investment adviser or from the admission to the investment adviser of one
17 or more members who, after admission, will be only a minority of the members and will have only a
18 minority interest in the business.

19 (6) It is unlawful for an investment adviser to take or have custody of any securities or funds of
20 any client if:

21 (a) the commissioner by rule prohibits ~~such~~ custody; or

22 (b) in the absence of rule, the investment adviser fails to notify the commissioner that ~~he~~ the
23 investment adviser has or may have ~~such~~ custody."

24
25 **Section 11.** Section 30-10-303, MCA, is amended to read:

26 "30-10-303. **Unlawful representation concerning registration or exemption.** ~~Neither the (1) The~~
27 ~~fact that an application for registration under 30-10-201(4)(6), A NOTICE FILING UNDER [SECTION 12],~~
28 ~~or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed ~~nor~~ or the fact that~~
29 ~~a person or security is effectively registered~~ OR A COMPLETE NOTICE FILING HAS BEEN MADE ~~constitutes~~
30 does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this

1 chapter is true, complete, and not misleading.

2 ~~(2) Neither any such~~ The fact that an application for registration OR A NOTICE FILING has been filed
3 or a person or security IS effectively registered OR A COMPLETE NOTICE FILING HAS BEEN MADE as
4 provided in subsection (1) or not the fact that an exemption or exception is available for a security or a
5 transaction ~~means~~ does not mean that the commissioner has passed in any way upon the merits of,
6 qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful
7 to make or cause to be made to any prospective purchaser, customer, or client any representation
8 inconsistent with this section."
9

10 **NEW SECTION. Section 12. Federal covered securities.** (1) The commissioner may require an
11 issuer to file any or all of the following documents with respect to a federal covered security provided for
12 in section 18(b)(2) of the Securities Act of 1933:

13 (a) documents that are part of a current federal registration statement filed with the securities and
14 exchange commission or amendments to a current registration statement filed with the securities and
15 exchange commission;

16 (b) a consent to the service of process signed by the issuer and payment of the fee required in
17 30-10-209; and

18 (c) annual or periodic reports of the value of the federal covered securities offered or sold in this
19 state.

20 (2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the
21 Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed
22 by the commissioner and a consent to service of process and may require the issuer to pay the notice filing
23 fee prescribed in 30-10-209.

24 (3) The commissioner may require the filing of any document filed with the securities and exchange
25 commission under the Securities Act of 1933, with respect to a federal covered security under section
26 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed
27 in 30-10-209.

28 (4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal
29 covered security if the commissioner finds that the order is in the public interest and there is a failure to
30 comply with any requirement of this section.

1 (5) The commissioner may waive any of the provisions of this section.

2
3 ~~NEW SECTION. Section 11. Exemption. The state of Montana is exempt from the provisions of~~
4 ~~the Philanthropy Protection Act of 1995, Public Law 104-62, pursuant to section 6(e) of that act.~~

5
6 NEW SECTION. Section 13. Codification instruction. ~~44~~ [Section ~~40~~ 12] is intended to be codified
7 as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply
8 to [section ~~40~~ 12].

9 ~~(2) [Section 11] is intended to be codified as an integral part of Title 30, chapter 10, and the~~
10 ~~provisions of Title 30, chapter 10, apply to [section 11].~~

11
12 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16 -END-